



Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages







Inside Front Cover

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Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages



Intended Purposes

The book contents are compilation of law and relevant measures concerning food and beverages, academic research outcome and accessible element of knowledge with regards to law and advertising practice. The author displays names and images as part of her academic case studies. They are not intended to insult, abuse, defame any party, or advertise product of any kind.

The organizations that provide funding to this research is not responsible for any content in this book. Rather, it is considered academic effort of the researchers alone. Shall there be any error or damages arising from the content, the authors are willing to take full responsibility within an academic scope.

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Preface

What is law governing advertising of food and beverages like?

Who enforces the law?

What are the enforcement mechanisms?

What would happen if an existing rule is challenged?

Answers to the questions above are available in this book.

The author truly hopes that this book will deliver the answers that “ignite” the flame of development in order to improve and alter existing law and maintain its sanctity and function that serves consumer protection.

Nongnuch Jaichuen

19 December 2013

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Introduction

Paper tiger referred to in this book means law and relevant measures relating to advertising of food and beverages containing high level of sugar, fat and sodium.

This book studies law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in 5 continents which are Asia, Australia, Europe, America and Africa. Selected countries-the United Kingdom (U.K.), the United States (U.S.), Brazil, Australia and Singapore-are country representatives of each continent, a subject of study in 3 dimensions as follows:

- First dimension Substantive law and measures, relevant departments that implement the law and measures, mechanisms controlling and monitoring relevant law and measures
- Second dimension Background of relevant law and measures
- Third dimension Enforcement of relevant law and measures

Therefore, the contents and nuances found in this book derive from the gathering of information regarding law and measures in relation to advertising of food and beverages containing high level sugar, fat and sodium in Thailand, England, the United States, Brazil, Australia and Singapore, from database accessible through websites of public and private organizations, independent agencies, and entities that support development of the private sector, Matichon Online Database, and the use of Google search engine between March- December 2013.

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First Proposal

Subject matters and the master controlling paper tiger

Subject matter of the paper tiger

The law and measures governing advertising of food and beverages containing high level of sugar, fat and sodium in Thailand, the U.K., the U.S., Brazil, Australia and Singapore, considering the rules and regulations enacted as a result of implementation relevant law, are found to have legal substance (as shown in Table 1-6 and Image 1-6), implementing bodies and advertising control mechanisms as follows:

Subject matter of the paper tiger

Table 1 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand

No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	The Foods Act B.E. 2522 (1979)	The Food and Drug Administration	Prohibiting false advertising that misleads or boasts qualities and characteristics of the product over and above its true qualities and characteristics to inappropriately induce belief; Before an advertisement is released through radio broadcasting and radio television, image display, films, or newspaper or other printed materials, or any other method, the advertisement must be checked and reviewed by an authorized person who may grant permission. Without a permission, an ads cannot be released. ¹
2	Law	The Consumer Protection Act B.E. 2522 (1979)	The Office of the Consumer Protection Board	Provision Advertising must not convey messages that are unfair, overstated or false, which may materially mislead consumers regarding the product or service, or messages that may adversely affect the society as a whole. Procedures Advertising must not be conducted in a way that harms physical and mental health, or causes disturbance to consumers. ²

Table 1 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
3	Law	The Public Health Ministerial Notification (B.E. 2550) (2007) regarding Labeling of Certain Pre-cooked Ready-to-eat Food	The Food and Drug Administration	<p>Warning Labeling of certain pre-cooked ready-to-eat food must display text messages or voice messages stating "Consume little and exercise for good health." The display of text or voice messages must be done the same way as it is for warnings displayed in advertisements.³</p> <p>Provision Image advertising and display of images along with text advertising, food name, health benefits, quality or characteristics of food must not be false or overstated, and must not materially mislead consumers or unreasonably persuade consumers to believe. The following terms are prohibited: "super", "magical", "totally", "holy", "wonderful", "most", or any other term that conveys comparable meaning.</p> <p>Warning Display of warnings in advertising of products prescribed by the Ministerial Notification must show the message "Read instructions before</p>
4	Law	The Food and Drug Administration Notification regarding Rules on Advertising Foods B.E.2551 (2008)	The Food and Drug Administration	<p>Warning Display of warnings in advertising of products prescribed by the Ministerial Notification must show the message "Read instructions before</p>

Table 1 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
				<p>consuming," in text or voice form, similarly to the display of warnings in advertising in prints, radio broadcasting, radio television, image display, films, and internet. Display of warning in voice advertising must be clearly audible for every syllable or illustrated as Super for at least 5 seconds. Text warning must be displayed with letters in color, format and size that is easily and clearly readable.</p> <p>Presenter in advertising</p> <ol style="list-style-type: none"> 1. Persons in medical or public health field, or any person that may lead the public to believe that he or she is in the said field, is prohibited in introducing or guaranteeing products, or presenting in an advertisement. 2. Person presenting in advertisements for instant gelatin or jelly must be older than 3 years old. 3. Person presenting in advertisements for instant gelatin or jelly which contains glucomannan or glucomannan flour must be older than 12 years old.³

Table 1 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
5	Law	The Broadcasting and Television Businesses Act B.E.2551 (2008)	National Broadcasting and Telecommunication Commission (NBTC)	<p>Control of advertising air time</p> <p>1. Free TV Advertisement duration must not exceed 12.5 minutes per hour. The total average duration per day must not exceed 10 minutes per hour.</p> <p>2. Subscribed TV Membership Advertisement duration must not exceed 6 minutes per hour. The total average duration per day must not exceed 5 minutes per hour.⁴</p>

Diagram 1 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand

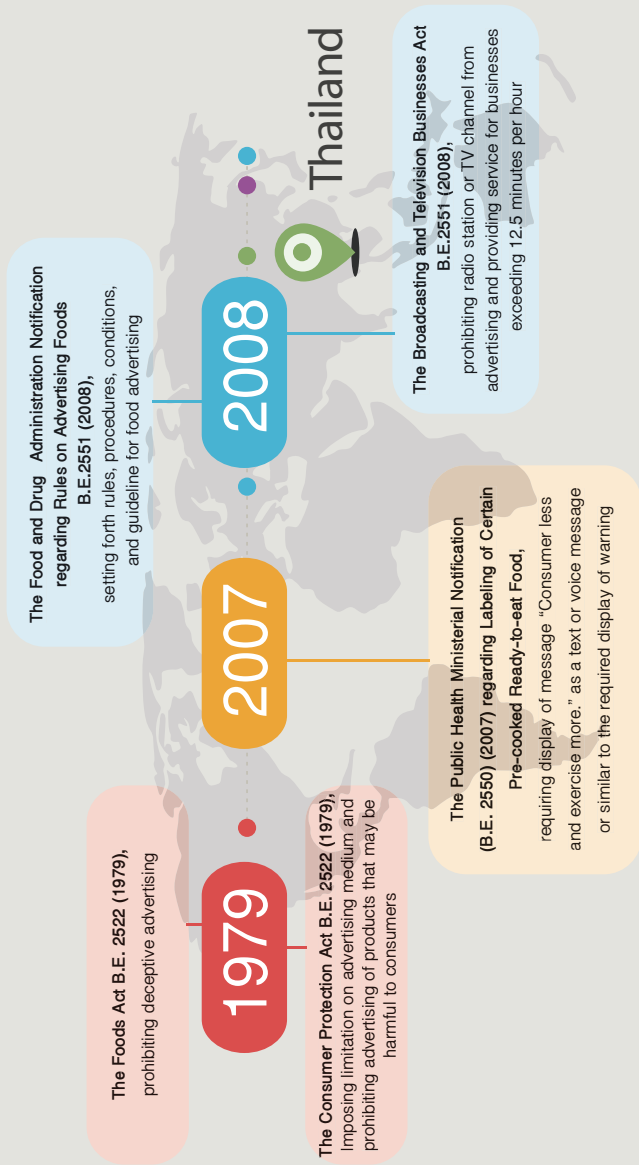


Table 2 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United Kingdom

No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	Trade Description Act of 1986 as amended in 2008 (The Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations 2008)	Officer of Trade	Controlling advertising and marketing of general businesses that may mislead consumers, causes aggressiveness and unfairness. ⁵
2	Law	Communications Act 1990, as amended in 2003	Office of Communication (Ofcom)	Subject matter Advertising must be lawful, appropriate, faithful, and truthful, not misleading, dangerous, or inflicting wide-spreading harmful effect to the society ⁶

Table 2 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United Kingdom (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
				<p>Advertising duration in a children program</p> <p>Providing clear rules and procedures in controlling TV advertising of food and snacks to children, setting advertising standard by classifying program types and creating lists of products and services which cannot be advertised, employing measures that limit inappropriate ads during broadcasting of programs for children age 0-8 (Ex Kids), limiting advertising time after 21:00 for programs for children age 5-8, and limiting advertising time after 23:00 for programs for children age 9-12. For programs suitable for children older than 12 years old, if harmful advertisement is found, such advertisement will be evaluated whether it should be removed from the station.¹</p>

¹Unlike the clearly set broadcasting schedule of regular TV programs, the broadcasting schedule of advertising in the U.K. is uncertain. Advertising during the programs suitable for children viewers is limited by duration during which the TV program is broadcasted.

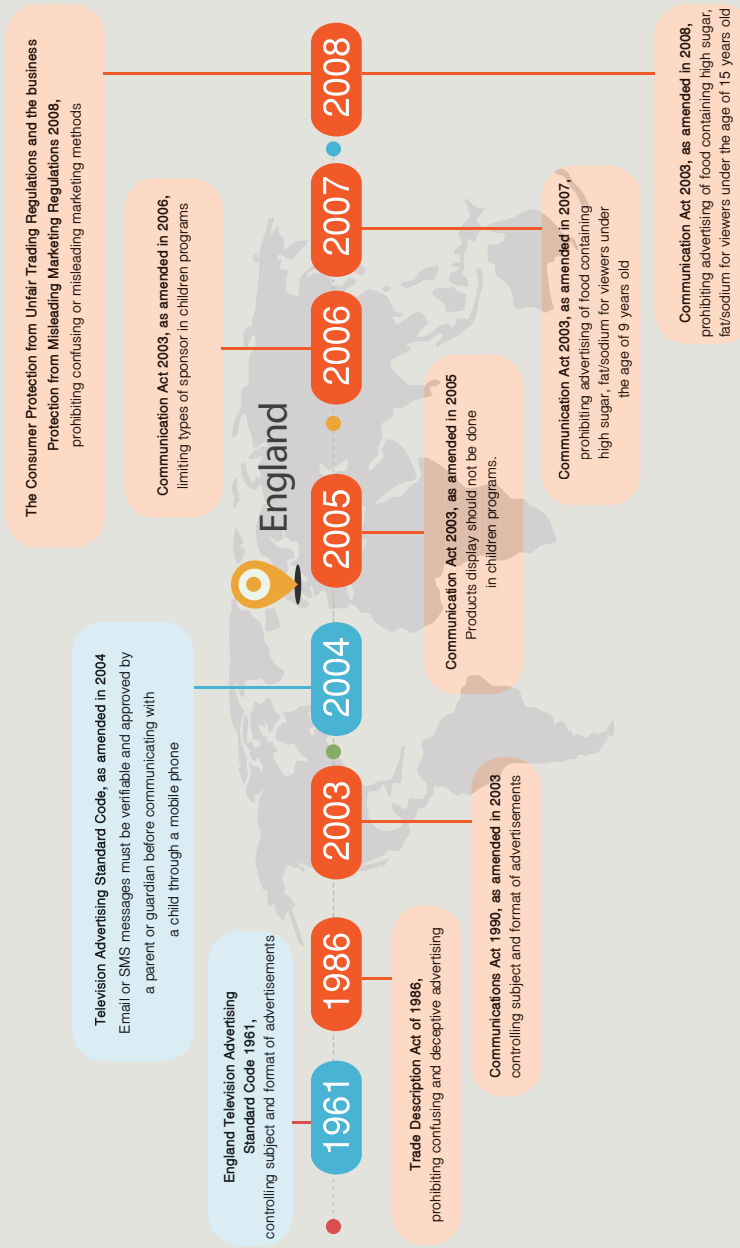
Table 2 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United Kingdom (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
3	Private business code of conduct	Television Advertising Standard Code	The Board Code of Advertising; The CAP Code	<p>Format</p> <p>Products display should not be conducted in a children program.⁷ Certain type of sponsoring is prohibited for children programs.⁸ Advertising of food containing high sugar, fat/sodium, by using famous figures, cartoon characters, or free gifts as a means to attract target groups, mostly children under the age of 15, is prohibited.⁹</p> <p>Subject matter</p> <p>Controlling the subject of advertisement. The advertised messages must not mislead consumers as to the overall nutritional or health benefits of a product, or guiding or persuading children or parents to buy the product. The advertising scene and technics must not induce unreasonable expectation, encourage over-consumption, and support adverse effect in dental health.¹⁰</p>

Table 2 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United Kingdom (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
				Applying for a permit Email or SMS messages must be verifiable and approved by a parent or guardian before communicating with a child through a mobile phone. ¹¹

Diagram 2 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United Kingdom



Note : An orange box represents law. A blue box represents code of businesses in the private sector

Table 3 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United States

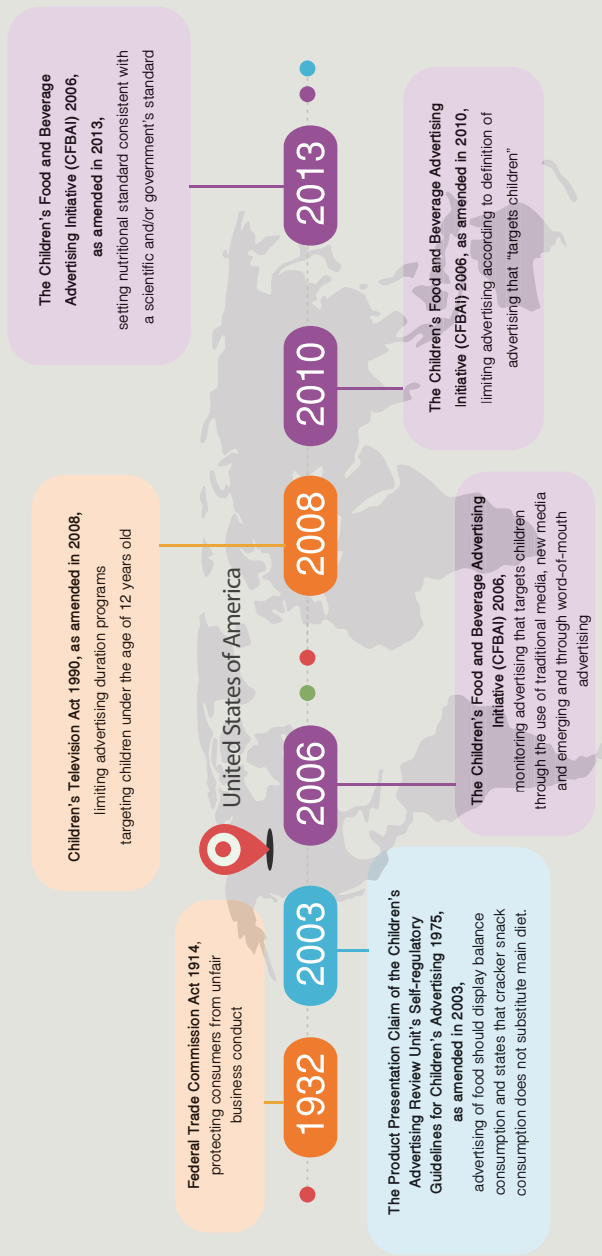
No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	Children's Television Act 1990, as amended in 2008	Federal Communications Commission (FCC)	Control of advertising time Limiting advertising duration within the targeted program for children under the age of 12 to 10.5 min/hr during weekends and 12 min/hr during week days. ¹² Protecting consumers from unfair business conduct ¹³
2	Law	Federal Trade Commission Act 1914	Federal Trade Commission (FTC)	Health promotion Promoting the use of quality products to support development in children's health and positive nutritional practices
3	Private business code of conduct	The Children's and Presentation Claim of the Children's Advertising Review Unit (CARU) Unit's Self-regulatory Guidelines for Children's Advertising 1975, as amended in 2003	The Children's and Advertising Review Unit (CARU)	Advertisement Advertising of food should display balanced, adequate and appropriate consumption. Advertising of cracker snack should clearly states that snack consumption does not substitute main diet. ¹⁴

Table 3 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United States (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
4	Private business requirements for voluntary membership	The Children’s Food and Beverage Advertising Initiative (CFBAI) 2006, as amended in 2010 and 2013	The Council of Better Business Bureaus (BBB)	<p>Monitoring advertising that targets children through the use of traditional media such as TV, prints, radio, internet, and new media and emerging such as smart phones, tablets, VDO games, and through word-of-mouth advertising.¹⁵</p> <p>Advertising rules</p> <ol style="list-style-type: none"> 1. Advertising must be done to advertise foods that have positive effect on health and must not target children. 2. The setting up of standard and development of criteria on nutritional levels must be consistent with a scientific standard and/or a standard set by the government. 3. Presentation of third person obtaining licenses to act as an actor or a famous person, or films tying to an advertisement should be limited. 4. Advertising by displaying advertised food or beverages in a program or the editorial section of media released to children viewers for the purpose of sale promotion is prohibited. 5. Advertising that “targets children” must be limited. 6. Advertising of a brand or logo of food products to primary school children is prohibited. (This limitation does not apply to charitable fund-raising activities, display of food products or message delivery to the public or other programs given to the head of a school)¹⁵

Diagram 3 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in the United States

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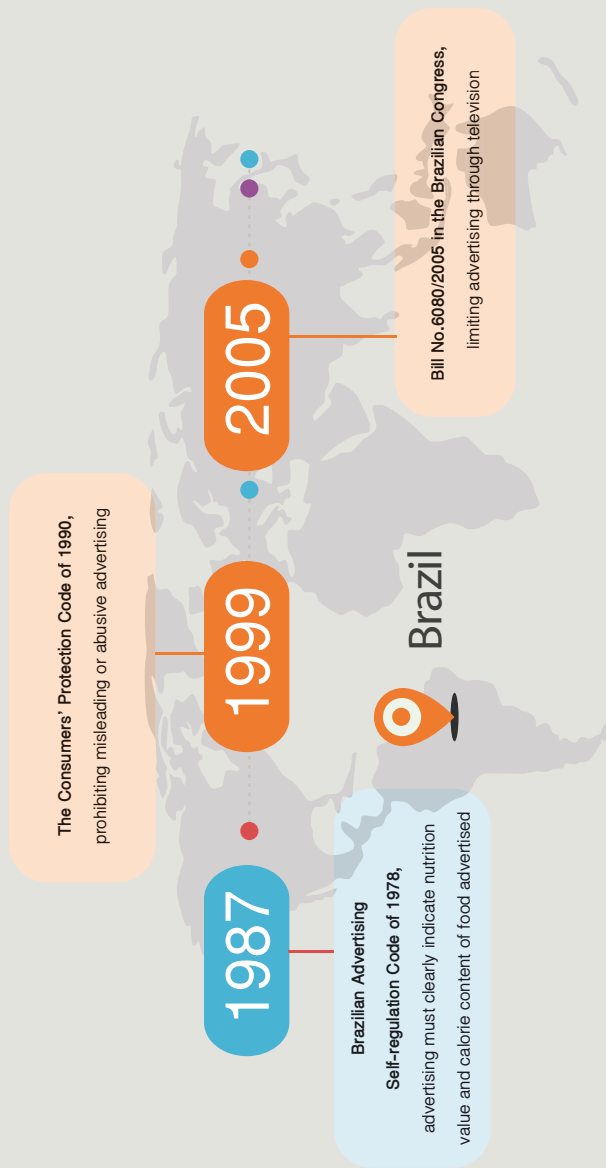


Note : An orange box represents law. A blue box represents requirements in the private business practice. Purple box represents requirements in private business practice for voluntary members

Table 4 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Brazil

No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	Bill No.6080/2005 in the Brazilian congress (Draft)	The National Health Surveillance Agency of the Ministry of Health	Advertising, including sale of food products and beverages that may cause obesity, through radio and TV between 6 a.m. to 9 p.m. is prohibited. ¹⁶
2	Law	The Consumers' Protection Code of 1990 (GPC for Código de Defesa do Consumidor)	The National Policy for Consumer Relations	Misleading or abusive advertising is prohibited. ¹⁷
3	Private business requirements	Brazilian Advertising Self-regulation Code of 1978	The Brazilian Advertising Self-Regulating Council (CONAR)	The advertisement of food products shall "expressly indicate, if possible, the nutritional and caloric value of the product being advertised." ¹⁸

Diagram 4 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Brazil



Note : An orange box represents law. A blue box represents requirements in the private business practice.

Table 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia

No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	Children's Television Standards of the Australian Broadcasting Act 1992, amended in 2009	Australian Communications and Media Authority (ACMA)	<p>Subject matter</p> <p>Advertising food for children cannot convey misleading or false messages regarding nutrition value.¹⁹</p> <p>Air time control</p> <p>Advertising before and after children program is prohibited. Advertising during programs targeting pre-school children is strictly prohibited. The number of time that an ads is on air during programs for primary-school children is limited. Repetition of advertising and TV programs that are considered children program is limited.²⁰</p> <p>Misleading and deceptive advertising is prohibited.²¹</p>
2	Law	Trade Practices Act 1974 or Competition and Consumer Act 2010	Australian Competition and Consumer Commission (ACCC)	<p>Subject matter</p> <p>Food product advertising should not contain any misleading or false information regarding nutrition regarding nutrition value of the product.²²</p>
3	Requirements in the private business practice	The Commercial Television Industry Code of Practice 1999	Commercial Television Industry Code of Practice of Commercial Television Australia (CTVA) or Free TV Australia	<p>Subject matter</p> <p>Food product advertising should not contain any misleading or false information regarding nutrition regarding nutrition value of the product.²²</p>

Table 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
4	Requirements in the private business practice	The Australian Association of National Advertisers Code for Advertising to Children 2003	Australian Association of National Advertisers (AANA)	<p>Format There are limitations on food advertising that targets children and also on the rules categorizing and positioning products in an advertisement.²³</p> <p>Subject matter Food and beverage advertising for children must not support or encourage an inert way of living and unhealthy consumption. It also must not contain misleading or false information regarding nutrition value of the product.²⁴</p> <p>Format Advertising and market communication must not reveal a person image, or any materials that reflect discrimination, assault, defamation on ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness, political view, and must not pursue sexual seduction, violence or vulgar language, and not in violation of community standard on health and safety.</p> <p>Competing companies Advertising or market communication must not be conducted on a false, confusing or misleading way. It must not distort facts regarding the company's competitor.</p>

Table 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
5	Private business requirements	The Australian Association of National Advertisers Code for Advertising or Marketing Communication to Children 2008	Australian Association of National Advertisers (AANA)	<p>Subject matter Advertising and market communication for children under the age of 15 must present factual information, safe, and must not display unreasonable and worrisome or horror images or events. They must not increase sexual pleasure in children or encourage children to request their parents to buy the product. The price showed on an ads or market communication to children must not be reduced by words such as "only" or "just". Advertising or market communication for children must be consistent with the AANA Food and Beverages Advertising & Marketing Communications Code.²⁵</p> <p>Format Advertising and market communication for children under the age of 15 must not allow the positioning of products in the part containing an editorial opinion, or the part of the program that has communicative concentration that directly accesses children. Specific messages or any reference or information must be marked with an asterisk sign. Footnotes in an advertisement</p>

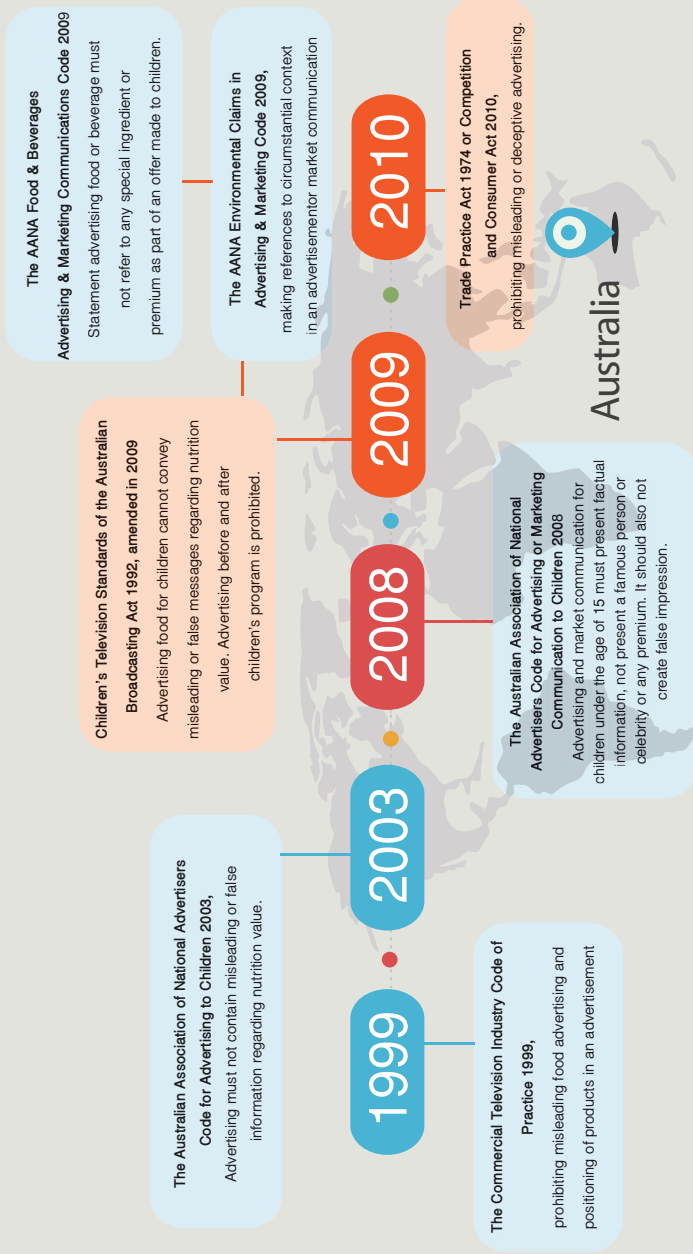
Table 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
6	Private business requirements	The AANA Food & Beverages Advertising & Marketing Communications Code 2009	Australian Association of National Advertisers (AANA)	<p>or market communication must be clearly showed and explained to children. Any competition arranged must be accompanied with a summary of basic rules for the competition, including the last day of the program. Advertising must not present a famous person or celebrity. Premium products must not create false or misleading impression in children's mind with regards to the nature or subject matter of the product.²⁴</p> <p>Subject matter Advertising of food and beverages in children under the age of 15 must not be misleading or based on false information. It must not take advantage of children's imagination and not make an impression that possession of the food or beverages would lead to physical, social or mental advantages over other children. It must not attract children in a way that encourages them to ask the parents to buy food or beverage. The statement about the food or beverage must not refer to any special ingredient or premium as part of the offer made to children.²⁰</p>

Table 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia (continued)

No.	Type	Legislation title	Implementing bodies	Subject matters
7	Private business requirements	The AANA Environmental Claims in Advertising & Marketing Communications Code 2009	Australian Association of National Advertisers (AANA)	Reference to any circumstantial context in an advertisement must not be misleading or falsifying, unclear or unbalance. It must show responsibility under the law or major restrictions. The distinct characteristics must be described in clear language, be specific in general, and reflective of scientific level. Any technical language or statistics must be done in a way that is clearly suitable for communication and capable of being easily understood. Printing of research result must indicate researcher(s) and reference(s). ²⁷

Diagram 5 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Australia

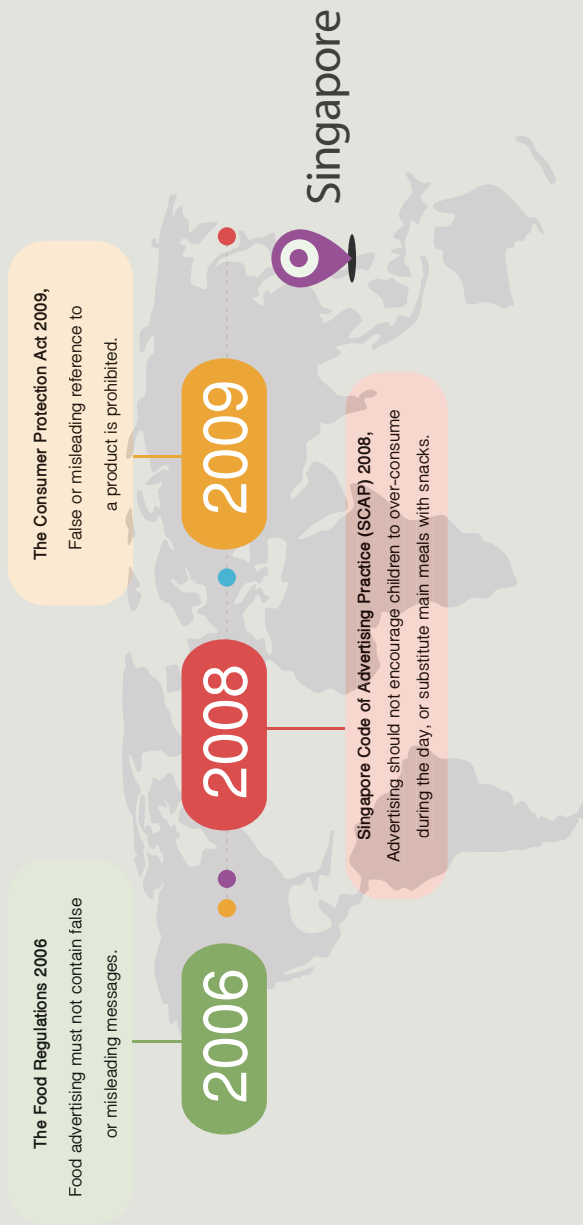


Note : An orange box represents law. A blue box represents requirements in the private business practice.

Table 6 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Singapore

No.	Type	Legislation title	Implementing bodies	Subject matters
1	Law	The Food Regulations 2006	The Agri-Food and Veterinary Authority of Singapore (AVA)	<p>Subject matter</p> <p>Advertising of food must not be misleading or false with regards to the brand, image or mark referred.</p> <p>Health reference</p> <p>Advertising of food must not make any reference that can be interpreted as a suggestion, a guarantee or presenting a person in the field of medicine or public health who helps prevent, alleviate, or cure illness or any health issue that may have any impact on human body, health or physical condition from consumption of the food.²⁸</p>
2	Law	The Consumer Protection Act 2009 (Fair Trading)	Ministry of Trade and Industry of Singapore	<p>False or misleading claim to a product is prohibited.²⁸</p>
3	Private business requirements	Singapore Code of Advertising Practice (SCAP) 2008	Advertising Standards Authority of Singapore (ASAs)	<p>Advertising should not aggressively encourage children to over-consume during the day or substitute main meal with snacks.³⁰</p>

Diagram 6 Law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Singapore



Note : An orange box represents requirements in the private business practice.

Master controlling paper tiger

The enforcement of law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries which include the U.K., the U.S., Brazil, Australia, and Singapore, can be classified to 3 mechanisms as follows:

1. **Legal enforcement by public entities or independent agencies;** for example in Thailand, the Foods Act B.E. 2522 (1979) and the Food and Drug Administration Notification regarding Rules on Advertising Foods B.E.2551 (2008) are controlled, monitored and enforced by the Food and Drug Administration, which is a public entity, responsible in controlling, monitoring and enforcing the legislation. The independent agencies that control, monitors and enforces the legislation are the National Broadcasting and Telecommunication Commission (NBTC).

Foreign countries employ mechanisms enforcing law and measures relating to food and beverages containing high level of sugar, fat and sodium through public entities as follows (See Diagram 7):

U.K.-Trade Description Act of 1986, as amended in 2008, and The Consumer Protection from Unfair Trading Regulations and the business Protection from Misleading Marketing Regulations 2008, are controlled, monitored and enforced by the Office Fair Trading (OFT). Also, the Trade Description Act of 1986 is controlled, monitored and enforced by Parliament of the U.K.

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U.S.A.-Children's Television Act 1990, as amended in 2008 is under control, monitoring and enforcement of the Federal Communications Commission (FCC). The Federal Trade Commission Act 1914 is controlled, monitored and enforced by the Federal Trade Commission (FTC).

Brazil-The Consumers' Protection Code of 1990 (CPC for Código de Defesa do Consumidor) is controlled, monitored and enforced by the National Policy for Consumer Relations.

Australia-The State and Territory Food Acts is controlled and enforced by Australian Association of the National Advertisers Code for Advertising to Children.

Singapore-The Food Regulations 2006 is controlled, monitored and enforced by the Agri-Food and Veterinary Authority of Singapore (AVA). The Consumer Protection Act 2009 (Fair Trading) is controlled, monitored and enforced by the Ministry of Trade and Industry of Singapore.

Diagram 7 Law enforcement mechanism adopted by government entities or independent agencies

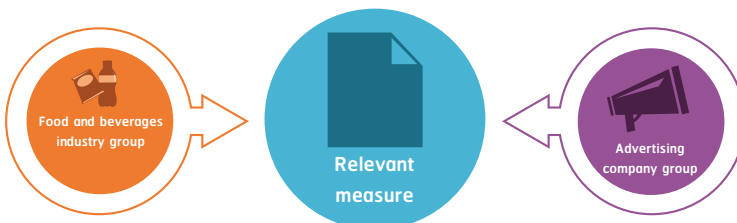


2. Self-governing of businesses in the private sector.

The following is a practice guide for businesses in the private sector and industries in selected countries. (See Diagram 8)

- The U.K.-Television Advertising Standard Code
- The U.S.-The Self-regulatory Guidelines for Children’s Advertising 1975, as amended in 2003 and the Children’s Food and Beverage Advertising Initiative (CFBAI) 2006, as amended in 2010 and 2013
- Singapore-The Singapore Code of Advertising Practice, as amended in 2008
- Brazil-Brazilian Advertising Self-regulation Code (1978)

Diagram 8 Self-governing mechanisms of business entities in the private sector



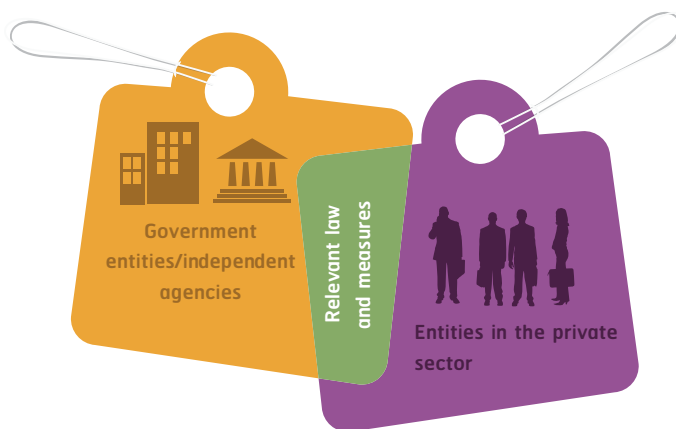
3. Joint monitoring between government entities or independent agencies and businesses in the private sector. The U.K. adopts measures under the Advertising Standards Code to control advertising whereby the Office of Communication Office of Communication (Ofcom), a government entity, and the Advertising Standards Authority (ASA), an independent agency, have joint responsibility in receiving complaints and monitoring advertising of general products and food or beverages containing high level of sugar, fat and sodium that targets children.

Australia adopts 2 measures that require joint monitoring in order to control general products and food or beverages containing high level of sugar, fat and sodium that targets children as follows:

1. Children’s Television Standards Measure, under monitoring of the Australian communication and Media Authority (ACMA)

2. Code of Practice Measure, under monitoring of the Australian Association of National Advertisers (AANA), pursuant to the Broadcasting Services Act (See Diagram 9)

Diagram 9 Joint monitoring mechanism between government entities or independent agencies and the private sector






All three mechanisms for enforcing the law and measures relating to advertising of food and beverages containing high sugar, fat and sodium in Thailand and foreign countries may be summarized as follows: in case of law, the enforcement is done by a government entity or an independent agency and relevant measures are monitored by an entity in the private sector. Both mechanisms include controlling, monitoring and implementing law and measures independently. They are different from joint monitoring between government entities or independent agencies and entities in the private sector, which share responsibility and functions in controlling, monitoring and implementing relevant law and measures altogether.

Wheel that doesn't go round

Mechanisms for the enforcement of law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries involves legal enforcement of government entities or independent agencies, self-governing mechanism of entities in the private sector, and joint monitoring between government entities or independent agencies and entities in the private sector. It is found that Thailand has a mechanism for legal enforcement done by government entities or independent agencies only. This is remarkably different from the mechanisms adopted by foreign countries, especially those in the U.K. and Australia, where all 3 mechanisms for the enforcement of relevant law and measures are adopted. These are mechanisms for an enforcement of law done by government entities or independent agencies, mechanism that allows self-governing of entities in the private sector, and mechanism for joint monitoring between government entity or independent agencies and entities in the private sector. The U.S., Brazil, and Singapore have adopted 2 mechanisms for enforcement of relevant law and measures which are the mechanism for legal enforcement done by government entities or independent agencies, and the mechanism that allows self-governing of entities in the private sector. (See Table 7)

Table 7 Mechanisms for controlling and monitoring enforcement of relevant law and measures relating to advertising of food and beverages containing sugar, fat and sodium

Country	Controlling, monitoring and enforcement		
	Law	Joint monitoring measures	Self-governing measures
	✓	-	✓
	✓	✓	✓
	✓	-	✓
	✓	-	✓
	✓	✓	✓
	✓	-	✓

The mechanism for controlling advertising in Thailand is weak because it relies on government entities. And, it is in voluntary basis; therefore there is no implementation on advertising control. Moreover, it is found that the governing law has not been thoroughly applied to the controlling of advertising activities. The two main reasons are: first, as

businesses and industries expands rapidly and manufacturing and product volume have increased constantly, along with aggressive market competition given sale promotion, advertising techniques, and tactical display of products, the controlling is difficult and usually delayed due to an insufficient number controlling persons; second, each law or regulation is under responsibility of various entities which only look into their own tasks and duties, missing coordination and decision-making power. Each entity is also responsible for its routine tasks, making the enforcement of law burdensome to them. Also, coordination and function of officials in each area are not practiced on the same standard.

Compared to the U.K., the Advertising Standards Code, which requires controlling advertising, is under joint responsibility of Ofcom (government entity) and ASA (independent agency) to receive complaints and controlling advertising of general products and food or beverages containing high level of sugar, fat and sodium, which targets children. Whereas in Australia, there are two measures that require joint monitoring on advertising of general products, and controlling of advertising for food and beverages containing high level of sugar, fat and sodium targeting children, which are the Children's Television Standards (under monitoring of ACMA, an independent agency) and the Code of Practice (under monitoring of private entities). The joint monitoring mechanism is governed by the Broadcasting Services Act, allowing the entities to work and enforce relevant rules and regulations more thoroughly.





Second Proposal

The beginning of paper tiger

The origin of law and measures relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand, the U.K., the U.S., Brazil, Australia, and Singapore, are rooted from the need of 4 different parts: (1) public demand, (2) government provision, (3) private sector participation, and (4) concern of international organizations

Public demand

1. Public demand

The push to have effective law was due to the rising public concern in the age of television broadcasting (around 1950), which then was a brand new media. Parents were worried about the impact of television on their children. A large number of people, especially those who had a child, demanded that law makers did something with the possible negative impact on children from their viewing of television. Therefore, there was a driving force to draft the Children's Television Act 1990, as amended in 2008, in the U.S.

Specifically in democratic countries such as Thailand, the U.K., the U.S., Brazil, Australia and Singapore, most law is drafted by the Legislative, as the state is empowered to

consider an issue at hand and draft law that corresponds to it. However, state's mechanism alone may not complete the whole legislative process. For example, in case of the U.S., the public concern against the new type of media, television, that it may have an a negative impact on children, was a strong force that pushed state men to draft law that controlled television broadcasting. However, even though the public concern sent a strong message to the Legislative to enact and implement protective legislation, it was not the only driving force that push the legislative process forward. Academic knowledge and evidence was gathered to support such process.

For example, in Brazil, although the control of advertising is yet an intense rule, there has been development of food safety, backed by the enactment of food safety law in 2012.³³ This was due to academic evidence supporting that ultra-processed products supplied by large multinational companies has entered Brazil and changed the way people consumed local food. In the U.S., there was a strong public demand from parents to pass law that controlled television broadcasting (became the Children's Television Act). At that time (1952), there was an academic group that did research, followed, analyzed and tried to explain a relationship between television viewing and children³⁵ in order to gain information that support the parents' demand. The public demand persisted for a long period of time. Not until 1990 did the legislation came into effect.

Government provision

2. Government provision

2.1 Consumer safeguard and protection

Because public entities have imported food from abroad, there has been concern regarding food safety in the importation. The concern has ignited the development of legislative process in order to erect control on the quality of imported food, ensuring consumption safety for consumers. An example of enacted legislation is the Food Act B.E. 2522 (1979).

2.2 Technological change

The absence of law or outdated legal provisions that could not be applied to the current situation, the period that technology and communication have evolved, tools, equipment and communication channels in modern product advertising that has changed rapidly, has led to a new legislative thinking, and the development in the law enforcement entities so that it corresponds to current situation. Examples of legislation as a products of revolution are Thailand's Food and Drug Administration Notification regarding Rules on Advertising Foods B.E.2551 (2008), the U.K.'s Communications Act 2003, Advertising Standards Code, and the Consumer Protection from Unfair Trading Regulations and the business Protection from Misleading Marketing Regulations 2008, the U.S.' Australia's Children's Television Act 1990, as amended in 2008, and Australia's Children's Television Standards of the Australian Broadcasting Act 1992, as amended in 2009.

From such surrounding circumstances, the public sector in Thailand, the U.K., the U.S., Australia and Thailand, had to revise the existing applicable law and regulations and, in certain cases, draft new law and regulations, in order to update the legal application given the current situation at the time.

2.3 Political change

Coup d'état or change in political system is an important factor that leads to a change or a new creation of law and regulations. The underlying reason is to have law that truly yields public benefit. This might be because the existing law gives monopoly power to certain entities or gives too much power to the state. An amendment to law or newly drafted law is, therefore, meant to create fairness and provide greater protection to the society. Examples of these law are the Broadcasting and Television Businesses Act B.E.2551 (2008), and Brazil's Consumers' Protection Code of 1990 (CPC for Código de Defesa do Consumidor).

A change in political system from dictatorship to democracy may also lead to new law drafting or amendment of existing law to enhance fairness for the people. An example is Brazil's Consumers' Protection Code of 1990 (CPC for Código de Defesa do Consumidor). Brazil was led by a totalitarian regime for a long period of time. Its constitution just came into effect in 1988. Thereafter, the Brazilian government enacted consumer protection law (Código de Defesa do Consumidor) in 1991.³⁶

In Thailand, even if the political system is democratic, much power has been in the hand of the government. The Broadcasting and Television Businesses Act B.E.2551 (2008), which is based on the legislation that the Office of the Council of State has spent 10 years drafting, finally came into effect because the coup led by the military cancelled the general election in October 2006, revoked the Constitution and terminated Parliament. Along with those, the military government prohibited any protest and political activity, blocked and censored the media, announced martial law, and arrested a number of cabinet members. After the arrangement of a temporary government subsequent to the military uprising, there was a drafting of a the new constitution (Constitution B.E. 2551 (2008)), the Broadcasting and Television Businesses Act B.E.2551⁵⁷ (2008) was passed and came into effect, having the main function in keeping order in the use of media in the public sector, the private sector and the community. The law emphasizes clarity in the broadcasting process and how to maximize benefit from the usage of frequency which is considered one of the nation's resources.³⁸

Private sector participation

3. Private sector participation

Measures relating to advertising of food and beverages containing high level of sugar, fat and sodium of foreign countries such as the U.K., the U.S., Brazil, Australia, and

Singapore, came to reality because the government went ahead with legislative drafting in order to control, monitor and enforce the legislative provisions. Business entities in the private sector, especially those in the industrialized counterpart and advertising companies or agencies, formed a group that has a function to control and monitor advertising in order to give assurance to the consumers that the messages conveyed through advertisement is reliable. For example, the U.K. has adopted the Television Advertising Standard Code; the U.S. has adopted the Self-regulatory Guidelines for Children's Advertising 1975, as amended in 2003 and the Children's Food and Beverage Advertising Initiative (CFBAI) 2006, as amended in 2010 and 2013, Australia has adopted the Commercial Television Industry Code of Practice (1999), AANA Code of ethics, Code of Practice, and the Australian Association of National Advertisers Code for Advertising to Children (2003), Brazil has adopted the monitoring measure called the Brazilian Advertising Self-regulation Code (1978), and Singapore has adopted the Singapore Code of Advertising Practice, as amended in 2008.

Other relevant measures that arose from the need of entities in the private sector played a role and participated in the self-monitoring mechanism, creating reliability and assurance to the public. The government, however, employs rhetoric in order to protect its interest more than the protecting public interest. This can clearly be seen in the case of the U.S.

In September 2004, the Federal Communications Commission (FCC), a government entity, proposed rules that apply the provisions under the Children's Television Act. The proposed rules were passed unanimously by all five committees under the FCC and were later developed to apply to digital television and internet communication. However, most broadcasting network argued that such rules were too strict and confusing, causing the revenue from advertising to reduce, let alone interfering with financial support of children programs. In November 2005, although the FCC intended to enforce those rules on January 1, 2006, two large broadcasting companies brought an issue to the court that the new rules were against the growing technology, obstructing creativity and innovation, and limiting the revenue stream received from the broadcasting of the programs. In December 2005, the National Association of Broadcasters brought a legal action against the FCC and radio and television broadcasters. An organization that supported children had intervene to negotiate with the FCC in order to have the rules amended, but the legal battle in court remained. In March 2006, the FCC amended the rules and arranged a public hearing. During that time, the industry followed the rules voluntarily.¹⁶

Likewise, the self-governing measures of business entities in the private sector has improved because it has also been watched and questioned from the general public. In the U.S., the Grocery Manufacturers Association wrote a report

in 2004 asking the Children's Advertising Review Unit (CARU), an organization formed by the National Advertising Review Council (NARC) to oversee advertising targeting children and support and be responsible for advertising targeting children through self-governing structure. CARU is managed by the Council of Better Business Bureaus (CBBB) and funded by members of the children advertising industry. The report stated that "it is appropriate (for CARU) to raise its role and extend overseeing of food and beverage advertisement." CARU responded by increasing transparency in some parts of its function, hired bilingual employees, and published white-covered notebooks stating that CARU activities have successfully controlled and monitored food advertising that targets children. In 2005, the Grocery Manufacturers Association proposed 6 recommendations to build CARU strength and capability, improve consumer's ability to file complaint about advertising, extend participation of nutrition experts, and reassure that CARU's advertising control covers VDO games, interactive websites, and the prohibition on placement in children programs.¹⁶

Concern of International organizations

4. Concern of International organizations

4.1 Consumer protection trend

The law and regulations relating to advertising of food and beverages containing high level of sugar, fat and

sodium, also came into effect as a response to the demand of an international organization which is an independent organization having no political tie, attempting to support consumer protection worldwide so as to ensure consumers of fair trade and eliminate confusing and misleading advertisement. The trend regarding consumer protection in the powerful nations also has influence on other countries around the globe. For example, Brazil has been led by the military government for a long period of time and until 1988 did the country was ruled under the Constitution. Since its democratic model is after the American one, the Brazilian government has passed the consumer protection law (Código de Defesa do Consumidor) similar to the one adopted by the American counterpart in 1991.³⁹

Thailand has also been influenced by the trend from abroad. In 1969, the Confederation of Consumer Organization, an independent organization not involving in politics, formed by consumer association from various countries with the head office located in Hague, the Netherlands, convinced private organizations in Thailand to form a consumer association. There was no consensus at the outset but the Confederation did not give up. It sent its employees to Thailand on this mission many times. Up until the 3 visit, a Thai private organization was persuaded and subsequently arranged a board responsible for studying consumer's issues under the name "Consumer Study and Support Department" which has developed to a great

extent in the private sector, along with constant coordination with the government. Up until 1971 during the government of Prime Minister Kuegrit Pramote, a consumer protection board was arranged, presided by the Deputy Prime Minister Praman Adireksarn.⁴⁰ In 1979, there was an enactment of the Consumer Protection Act B.E. 2522 (1979) in Thailand.

4.2 Management and proposals to solve health problems

Subsequent the world conference that focused on management and proposal of recommendation to solve health problems arising from eating habit, the participating countries or members adopted the recommendations and enforced them in the law of the country. For example, in Brazil the Congress drafted Bill No.6080/2005 in 2004, and since then several bills were introduced by the Brazilian government in order to limit advertising that targeted children. Recently, the legislation number 6080/2005 came into effect, prohibiting advertising and selling of products, food and beverages that may cause obesity on radio and television between 6 a.m.- 9 p.m. The legislation allows the National Health Surveillance Agency under the Ministry of Public Health to define food and beverages that may cause obesity and set out penalties in case of violation. In March 2005, there was a recommendation by the Attorney General of Brazil and the Guideline on International Food Strategy and Physical Activities of the World Health Organization. The National Health Surveillance Agency

of the Ministry of Public Health formed an ad hoc committee to draft recommendations that aimed to control advertising of food and sale promotion that targeted children (as per the resolution of Recommendation No. 73). The committee was composed of representatives from the Ministry of Public Health, the Consumer Protection Institute, the Food Industry Association of Brazil (Conselho Nacional de Auto-Regulamentação Publicitária, or SRO), and the Brazilian Society of Paediatrics. These committees drafted recommendations and in April 2006, there was heavy and continuous discussion regarding the definition of “food” within the scope of recommendation.

The draft recommendation specified that food marketing should not discourage consumption of vegetables, fruits and nuts group, or unfairly support consumption of food containing high level of fat, sugar and sodium, and beverages providing low nutrition. Specifically, the important recommendations supported limitation on advertising of food and beverages containing high level of sugar, fat and sodium, and those with low nutrition:

- Advertising that targets children must not be presented on television between 6:00-21:00.
- A warning message “This product contains high saturated fat. Over-consumption of saturated fat increases the risk of diabetes and heart disease.” Must be displayed in an advertisement.
- Marketing and sale promotion must not be carried on in electronic films, online games and education tools.

- Scholarship or funding must not be given to a school or sport event that provides the food.
- Marketing of the food must not be carried on in school or any place where children are under care.

There is a schedule for public hearing accompanying the draft legislation in November 2006. If approved, the draft legislation will come into effect and subsequently gives the power to the National Health Surveillance Agency, the Ministry of Public Health, to control health-related problems, including food advertising, pursuant to Legislation 9.782, dated 26 January 1999. However, there was an argument that the exercise of power by certain members of Conselho Nacional de Auto-Regulamentação Publicitária (SRO) was unconstitutional on the ground that the National Health Surveillance Agency was not an authorized entity that could set out rules governing the matter.⁴¹

Besides that, the World Health Organization prepared a set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children, which was endorsed by the 63rd World Health Assembly Conference on 21 May 2010⁴². (See Diagram 10)

From the 63rd World Health Assembly Conference, the Recommendation and practical framework and/or appropriate mechanism that supports responsible marketing of food and non-alcoholic beverages to children were set out. The Recommendation and practical framework led to

the reduction in negative impact from consumption of food containing high saturated fat, trans fat, sugar, or salt. Countries were encouraged to apply them in an appropriate context. The U.S. was a member country that adopted the Recommendation into their own called “the Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non-Alcoholic Beverages to Children in the Americas”.⁴³

In Singapore, although there has not been bold legislation controlling advertising, there has been an attempt to push forward law and measures governing advertising of food to children. For the development direction of food advertising to children, the Ministry of Health (MOH) and the Health Promotion Board (HPB) are in the process of revising and strengthening marketing standard for advertising of food and drink products that contain high level of sugar or sodium to children within the country. From the steps of development, proceeding, revision of current undertaking, examination / analysis / evaluation using information derived from locals and public hearing participated by all stakeholders from the public sector, the private sector and the general public, the summarized proposal is the need to strengthen standard in advertising of food to children in Singapore according to the recommendation of the World Health Organization, under the set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children.⁴³

Nevertheless, Thailand has pushed forward legislation that controls advertising of food and beverages containing high sugar, fat and sodium in accordance with the Global Strategy on Diet, Physical Activity and Health (DPAS). Thailand has participated in conferences, discussion and exchange of ideas and technical knowledge regarding marketing of food and non-alcoholic beverages to children. After extensive meetings, a number of organizations have participated in the legislative drafting process. The main organization in the driving force is the Consumer Protection on Health Program, which helped raised awareness from all sectors including the public sector, businesses and schools, regarding the impact from food and drink marketing on children's eating habit and health. Moreover, public hearing was arranged in the process of forming a measure that controlled advertising which affected children. The push forward began in 2005 up until 2007. The National Radio Broadcasting and Radio Television Commission rendered a resolution approving the release the Public Relation Departmental Notification on "Rules and Duration for Advertising and Business Provision on Radio and Television which May Impact Children and Youth", dated 18 January 2008, and became effective on 18 February 2008 onward.⁴⁶ It is deplorable that this the Notification was eventually repealed during the "legislative vacuum" period after the announcement of the Broadcasting and Television Businesses Act B.E.2551 (2008).

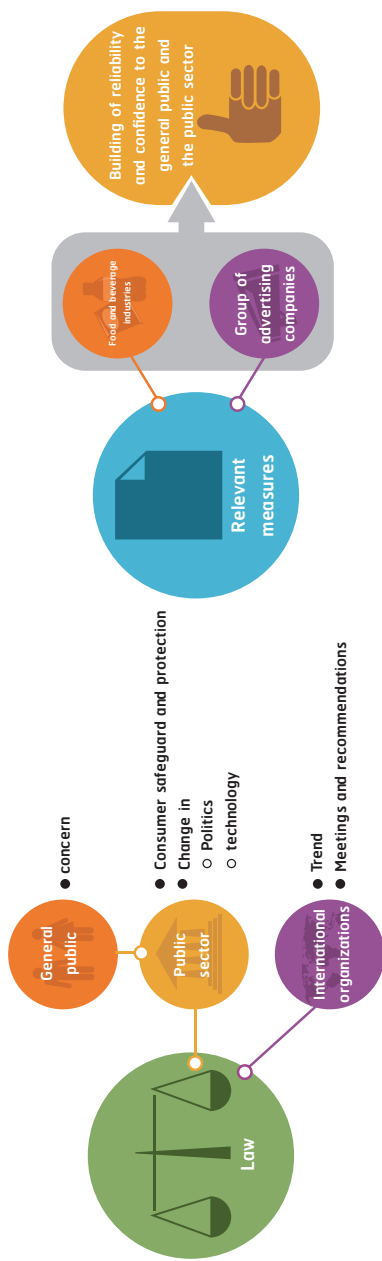
In Thailand, there has been a translated version of the Recommendation on the Marketing of Foods and Non-Alcoholic Beverages to Children to Thai language available as publication to involving person having decision-making power or having an authority to set policy.⁴⁴

Diagram 10 The driving force supporting the Recommendation on the Marketing of Foods and Non-Alcoholic Beverages to Children



Therefore, the origin of legislation in the public sector is rooted from public entities, the general public and international organizations, for the aim to protect and safeguard consumers, while the relevant measures comes from the desire of businesses in the private sector to participate in the self-monitoring structure, in order to create reliability and confidence to the public sphere. (See Diagram 11)

Diagram 11 The way that legislation and measures regarding advertising of food and beverages containing high level of sugar, fat and sodium comes about





Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages



Third proposal

Transformation of paper tiger

The enforcement of law and measures involving advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries which are the U.K., the U.S., Brazil, Australia, Singapore, passes the legal enforcement mechanism carried on by public entities or independent agencies, self-governing mechanism of business entities in the private sector, and joint-monitoring mechanism between a public entity or independent agency and a business entity in the private sector. Relevant legal enforcement and measures can be summarized as follows:

Becoming iron rules

1. Receiving complaints

Open for complaints is one of the processes within the mechanism for enforcement of law by public entities or independent agencies, and joint-monitoring mechanism between a public entity or independent agency and a business entity in the private sector. This process starts from the general public or a competing company, from whom a complaint is filed, either by mail, phone, fax, or email, in order to complain about advertising that does not comply with the relevant law or measures. The complainant may file a complaint at an office which is responsible for receiving complaints. The law enforcement mechanism by a public organization or an independent agency, for instance, in Thailand a person can file a complaint against a misleading advertisement at the Health

Product Watch Center, the Food and Drug Administration, or file a complaint at a complaint filing and consumer protection unit as part of the radio broadcasting and television business against advertising that is done over the time limit prescribed by law.

For the self-monitoring mechanism carried on by business entities in the private sector, a person in the U.S., Australia, Brazil and Singapore, may file a complaint against an advertisement with CARU, ANNA, CONAR, and ASAS respectively.

For the joint-monitoring mechanism carried on between a public entity or an independent agency and an organization for development in the private sector or a business entity a person in the U.K. may file a complaint against an advertisement with a public organization such as Ofcom, or an independent agency such as ASA.

2. Review complaints

After the office responsible in receiving complaints submitted the filed complaint to the committee for a review process, the final decision may entail a penalty which may be imprisonment, fine, warning, adjustment or revocation of the advertisement at issue. On the other hand, the complaint might be dismissed if an examination finds that the claim is not valid. In this process, all 3 mechanisms on the enforcement and monitoring of law and relevant measures are based on similar process and review criteria. For example, in England there has been complaints against Coca Cola in advertising vitamin water by claiming that the water contains nutritious value equivalent to energy received from vegetables and may prevent diseases. However, when ASA examined evidence relating to the claim, it rendered a decision to revoke the advertisement.

3. Making a report

Each year the office responsible for receiving complaints makes a report describing the result of enforcement of law and relevant measures to the public sector. For the legal enforcement done by a public entity or an independent agency, a report is prepared and given to the head of the organization, and is also published on the organization website. For the self-monitoring mechanism carried on by a private organization, and the joint monitoring mechanism carried on by and between a public entity or an independent agency or an organization for development of the private sector, and a business entity in the private sector, a report is prepared and distributed to a public entity that has power under the law or measure, and is also published on the organization website. In Australia, the available mechanism is the joint monitoring carried on by and between a public entity or an independent agency or an organization for development of the private sector, and a business entity in the private sector. Therefore, ABS, which is an organization responsible for receiving complaints, will write an annual report and send it to the ACMA, which is a public organization.

The process of enforcement of law and relevant measure relating to advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries, through the self-monitoring mechanism carried on by business entities in the private sector and the joint monitoring mechanism carried on by and between a public entity or an independent agency, and a business entity in the private sector, involves similar enforcement process. It starts from complaint filing to submitting the complaint to a review process, ending with the final decision made by the review committee. After that, a report will be done to report the result of implantation to public organizations. (See Diagram 12 and Table 8)

Diagram 12 The process of enforcement of law and relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium

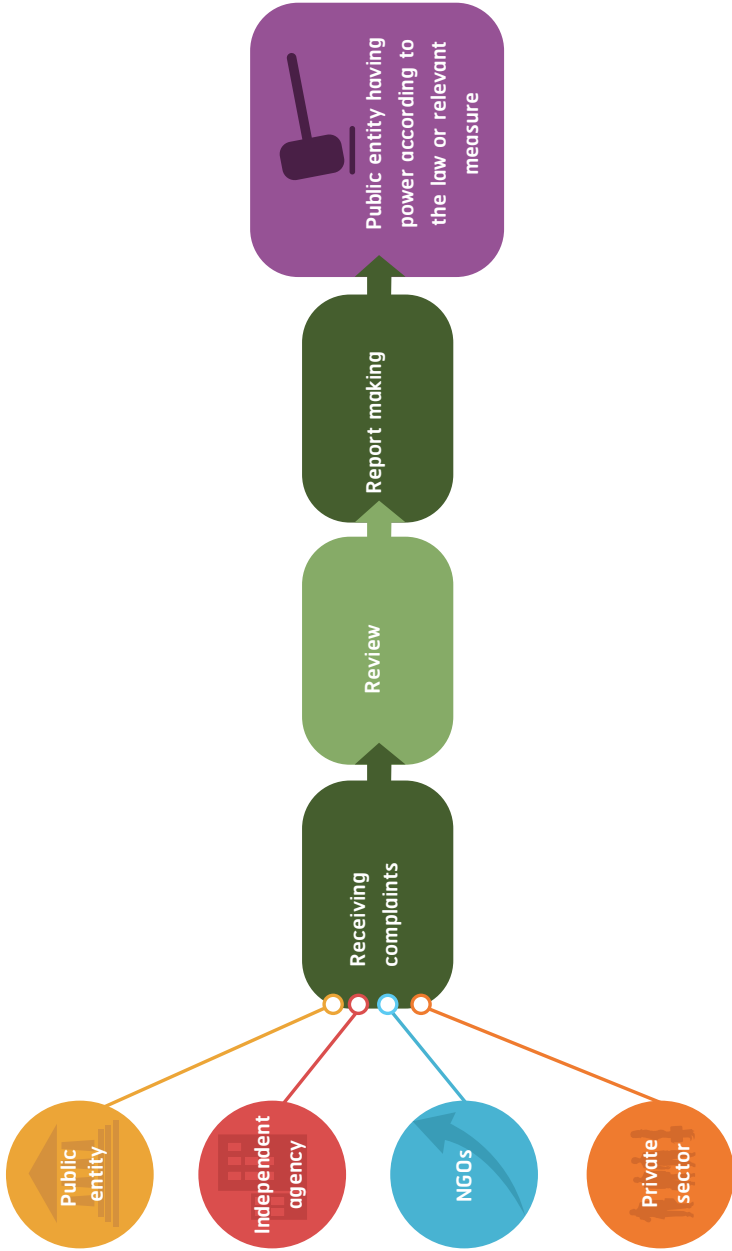


Table 8 The process of enforcement of law and relevant measures relating to advertising of food and beverages containing high level of sugar, fat and sodium, according to the enforcement mechanism

Process	Public sector	Independent agency	Business entity in private sector	Notes
Process of enforcement of law by a public organization or an independent agency	Receiving complaints, review complaints, and impose penalties	Receiving complaints, review complaints, and impose penalties	-	<ol style="list-style-type: none"> 1. Criminal penalties (imprisonment, fine) 2. Fine, correction, revocation of advertisement 3. Suspension, revocation or seizure of a permit 4. Release the review result to the public
Self-monitoring mechanism carried on by business entity in the private sector or industry	-	-	Receiving complaints, review complaints, and impose penalties	<ol style="list-style-type: none"> 1. Warning 2. Fine or correction of advertisement 3. Release the review result to the public
joint-monitoring mechanism carried on between a public entity or an independent agency or an organization for development in the private sector, and a business entity in the private sector or industry	Receiving complaints, review complaints, and impose penalties	Receiving complaints, review complaints, and impose penalties	Receiving complaints, review complaints, and impose penalties	<ol style="list-style-type: none"> 1. Criminal penalties (imprisonment, fine) 2. Fine, correction, revocation of advertisement 3. Suspension, revocation or seizure of a permit

Check bill

In the enforcement of law and relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries, examples of the process carried on, examination, review and giving judgment under the law and provisions in the relevant measures are as follows:

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium

Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Judgment
	<p>The Food and Drug Administration (FDA) 2003 Advertising of coffee candy "Birdy", produced by Ajinomoto Co., (Thailand) Ltd., was not reviewed by the FDA before it was released.</p> <p>The Office of the Consumer Protection Board (OCPB) 2006 Advertising of green tea drink "Oishi" displaying the message "Freebie by Oishi" during 7 March 2005 — 24 May 2005, and an advertisement in newspaper published on 12 May 2005, displaying a message "Get rich fast like a thunder, turn 30 Oishi lid such advertising for 30 million", are considered unfair to consumers, or may have an adverse effect to the general public.</p>	<p>Such advertising was in violation of Section 41 of the Foods Act B.E. 2522 (1979) and may be subject to punishment under Section 71 for advertising without a permit. The FDA ordered a suspension to the advertising.</p> <p>Advertising of green tea drink "Oishi" did not comply with the Foods Act B.E. 2522 (1979). The OCPB, therefore, imposed a fine on the producer and 2 authorized directors, for 120,000 baht each.⁴⁷</p>

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium (continued)


Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Judgment
	<p data-bbox="359 946 379 1292">Advertising Standards Authority (ASA)</p> <p data-bbox="391 1252 412 1292">2008</p> <p data-bbox="423 662 655 1292">A commercial of cracker snack "Walker" is viewed by Gary Lineker as distasteful and inappropriate, causing the feeling of unhappiness and dismay. The advertisement shows a scene of a bus passing a very low bridge, causing the roof of the bus to be torn apart. There had been several complaints claiming that watching the commercial making them feel bad, and also pressing on the person having experience in fatal accident similar to what was shown in the commercial.</p> <p data-bbox="666 1252 687 1292">2009</p> <p data-bbox="699 711 779 1292">Coca Cola advertised vitamin water, claiming that the water contains nutritious value equivalent to vegetables that provide energy and may prevent diseases.</p> <p data-bbox="819 1252 840 1292">2010</p> <p data-bbox="851 667 932 1292">From ASA monitoring, it was found that contents in the Swizzels Town website, created by Swizzels Matlow, contained games, images and videos.</p>	<p data-bbox="391 232 502 643">After knowing about the facts regarding the commercial, Walkers removed it from the TV broadcast and promised that it would not advertise a product that way in the future.⁴⁸</p> <p data-bbox="699 228 810 643">When ASA examined evidence involving the nutritious claim of the vitamin water, the ASA ruled to remove the advertising from TV broadcast.⁴⁹</p> <p data-bbox="851 207 932 643">ASA ruled that the contents lacked responsibility and supported unhealthy eating habit in children.⁵⁰</p>

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium (continued)


Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Judgment
	<p>Federal Trade Commission (FTC)</p> <p>2002</p> <p>Two teenagers from New York claimed that McDonald's advertisement containing messages "McChicken everyday", "BigN Delicious Everyday" and "McDonald is part of your diet balance and way of living" were misleading by making people think that they may consume McDonald meals everyday without a negative consequence on health.⁵¹</p> <p>The Children's Advertising Review Unit (CARU)</p> <p>2003</p> <p>In April 2003, Quaker, which was then part of Pepsi Cola, released an advertisement of sweet, grainy cracker snack. The advertising scene showed a child sitting by himself being bored amid the ongoing party with vegetables being proved. There was lighting shining on the vegetables with an attempt to convey a message that the child clearly did not like the legumes. When an image of the snack was shown, the child looked up and began to have a better mood.</p>	<p>This case was decided in completion in September 2003. The judge in the case stated that there was no evidence pointing that McDonald was part of the misleading advertising scheme.⁵²</p> <p>According to CARU practical guideline, the advertisement was in violation of the rules on displaying of image about foods, by showing that vegetables were not appealing, but instead sweet, grainy cracker snack was exciting and fun. Quaker had to remove the ads following CARU request.⁵⁴</p>

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium (continued)



Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Judgment
	<p>2004 An advertisement showing a boy having cereal most of the time besides the main meal and an image of chocolate flavor was showed. There was a complaint that the image of a serving proportion that was too large may mislead children and encourage them to over-consume because the product was advertised as snack mixed with chocolate, not a main meal.</p> <p>The National Policy for Consumer Relation</p>	<p>In November 2004, the company stopped the advertisement. It also showed CARU its intention to create confidence on the change and improvement on advertising of cracker snack to have a better advertisement for children in the future.</p>
	<p>2003 The Consumer's Defense Public Attorney for São Paulo brought a legal action against Coca Cola and Ambev-Pepsi to overhaul advertising and marketing to children, and gave warning to consumers regarding risks in over-consuming sugar.</p> <p>The Brazilian Advertising Self-Regulating Council (CONAR)</p> <p>2004 Advertisement of a famous chewing gum promoting its new flavor by stating that it had taste of fruit salad was subject to a claim against it that such advertisement may lead children to supplement gum to real fruit salad.</p>	<p>In December 2003, a judge rendered a judgment against Ambev-Pepsi that the company should limit advertising and sale promotion of beverages targeting children. However, another court ruled in favor of Coca Cola that there was no sufficient evidence to hold Coca Cola liable on the same issue.⁵³ Today, both cases are at the appeal level.</p> <p>In December 2004, CONAR supported the claim and ordered suspension to the advertising</p>

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium (continued)



Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Judgment
	<p data-bbox="357 797 379 1295">Australian Association of National Advertisers (AANA)</p> <p data-bbox="391 1252 414 1295">2004</p> <p data-bbox="425 699 575 1295">ANNA received complaints from McDonald (Australia) Co., Ltd. against Subway (“advertiser”) regarding a TV commercial for the advertiser’s product. The complainant claimed that the advertisement distorted the facts about the product sold by the complainant.</p> <p data-bbox="586 967 609 1295">Advertising Standards Bureau (ASB)</p> <p data-bbox="621 1252 644 1295">2007</p> <p data-bbox="655 683 902 1295">ASB accepted a complaint against McDonald (Australia) Co., Ltd. that advertised a meal set that led viewers to understand it as a reward. The scene showed a number of children playing at an ice skate ring. Among them was a girl crying because her ring fell to the sewage. Another child went into the sewage pipe to take the ring back from a green monster. The helping child got McDonald Happy Meal as a reward from the crying girl and the wife of McDonald store manager.</p> <p data-bbox="913 1252 936 1295">2009</p> <p data-bbox="948 683 1005 1295">ASB received a complaint regarding 2 advertisements of Cadbury Schweppes-Solo</p>	<p data-bbox="425 245 546 646">The review result found that the ads was not misleading, or intended to deceive, or having a tendency to mislead or deceive. The complaint was, therefore, dismissed.⁵⁶</p> <p data-bbox="655 237 804 646">The Advertising Claims Board received the complaint transferred from ASB and ruled on the issue that the ads must be improved or adjusted, and could no longer be broadcasted.⁵⁷</p> <p data-bbox="948 245 1034 646">The Advertising Claims Board received the complaint transferred from ASB and ruled that both ads must be revoked.⁵⁸</p>

Table 9 Examples of the processes and subsequent judgment under the law and provisions in the relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium (continued)

Country	Processes and subsequent judgment under the law and provisions in the relevant measures	Examination/Review	Judgment
	<p>Ads 1 violated health and safety. It displayed a scene of a man drinking Solo and kicked the finished can. The cans did not go into a trashcan, therefore, the presenting image was trash all over the place.</p> <p>Ads 2 defamed a person by presenting a man wearing a pink ballerina skirt being attacked by Andrew Symonds, a cricket player.</p> <p>2011</p> <p>ASB accepted a complaint against Unilever in advertising Pandle Pop ice-cream on TV, presenting famous cartoon animations.</p> <p>2012</p> <p>ASB received a complaint against a TV commercial of McDonald (Australia) Co., Ltd. that presented a scene of a group of children going on a bus to a sport field. During the traveling, there was information given about McDonald football trip. A commercial as such did not offer a food healthy food choice.</p>	<p>The Advertising Claims Board received the complaint transferred from ASB and ruled that both ads must be revoked.⁵⁹</p> <p>The Advertising Claims Board received the complaint transferred from ASB and ruled that both ads must be revoked.⁶⁰</p>	

Note: Information about Singapore is not found.

Opening the creative road

1. Check before and after

Besides the complaint-filing process, the legal enforcement mechanism by a public entity or an independent agency, the government is able to examine an advertisement both before and during the broadcasting. For example, in Thailand there has been an examination of a green tea advertisement containing unfair messages to consumers or having potentially adverse effect to the general public. The public sector, by the Office of the Consumer Protection Board (OCPB), which is a responsible entity under the Consumer Protection Act, ordered a fine on such violation.⁶¹

2. Arrange supporting activities

Activities supporting enforcement and compliance of law and relevant measures are part of the enforcement process. They help the process to become more efficient and result-oriented. This approach applies to the mechanism of legal enforcement by a public entity which is an independent agency.

For example, in Thailand the Food and Drug Administration (FDA) entered into an MOU with the Office of Consumer Protection Board (OCPB), Consumer Protection Police Division, in order to monitor problems of unlawful advertising of food, beverages and health products, or unfair advertising in the business of radio broadcasting and television.⁶² Or the FDA arranged the “Thai Pledge” project which was an agreement upon the policy advertising food and beverage production for

children with responsibility. It was collaboration among 6 leading companies on food and beverages. The initial agreement imposed prohibition advertising of food and beverage products to children under the age of 12 in Thailand.⁶³

Examine the person enforcing the rules

The process of enforcement of law and relevant measures on advertising of food and beverages containing high level of sugar, fat and sodium in Thailand and foreign countries through the legal enforcement mechanism carried on by a public entity or an independent agency, self-monitoring mechanism of the private sector, and the joint-monitoring between a public entity or an independent agency and a business entity in the private sector, is similar. The process starts from the complaint-filing procedures, going through the review and examination, and the ruling on the issue complaint. After that, a report will be done in order to submit a result to an involving public entity.

Although there has been such a process, a lack of efficiency persists, especially in the legal enforcement in the self-monitoring scheme of the private sector. A report of the result to the government does not guarantee that the private sector has self-monitored efficiently. A case study in the U.K. confirmed that the self-monitoring mechanism failed to operate. For example, in 2005, a U.K. organization that was formed by an organization for private sector development, called Alliance for Better Food and Farming, demanded for

a legal limitation on food marketing that was negative to children's health, on the logic that *"the voluntary monitoring in the context of high competition such as this, the voluntary control mechanism does not work."*⁶⁴ In 2006, the British Prime Minister (Mr. Tony Blair) warned producers of junk food in the U.K. to limit and control advertising that targeted children. On 26 July 2006, he made a statement regarding the overall public health issue that the government would force the food industry to stop advertising junk food that had an impact on children in 2007 if the rules that allowed compliance on a voluntary basis were not successful.⁶⁵

As for the process for implementing the law and relevant measures through the enforcement mechanism carried on by a public entity or an independent agency in as an ongoing process in Thailand, it is found that the following up and examination advertising in Thailand is not efficient and not result-oriented. The study of Media Monitor which followed advertising during children programs broadcasted 1-14 March 2008, finds that there was no snack advertisement during any children programs that exhibited a warning message regarding consumption to children. There was only FDA number (Number of Food and Drug) and FDA required warning *"Consume less and exercise for health."* that were showed. There was no warning, except for advertising of Pipo jelly only, in any advertisement that makes recommendation that appropriate food intake must not be done during walking or running. The most important thing is children should not forget to chew before swallowing (so that the food will not block the oesophagus).⁶⁶

The assessment on the legal enforcement in Australia by using a research study on the Children's Television Standards of the Australian Broadcasting Act 1992, as amended in 2009, (CTS), finds that advertising that violates CTS the most is advertising that describes food quality with the term "special". This type of advertising amounts to almost 83 percent of food and beverage advertising during children program. Moreover, it is found that an advertisement would be repeated several times during a children program. There is also sale promoting schemes offering free stuff, competition, and presentation of figures that children like.⁶⁷ In sum, this assessment shows that nowadays rules on advertising are inadequate. The existing rules must be followed and examined closely in order to prevent children from the effect of unhealthy food advertising.

A case example of the process, examination, review and ruling according to the law and relevant measures, finds that the handling or reviewing are not efficient because the review process is likely to be intervened by the food industry such as, in Brazil, Coca-Cola and Ambev-Pepsi were sued on the ground that it caused obesity rate in the country to increase. The legal action forced both companies to stop advertising and marketing to children. A judge sitting in that case gave a reasoning that Ambev-Pepsi should be handled by subjecting to limitation on advertising and sale promotion for drinks that targeted children consumers. Another reasoning was in favor of Coca-Cola by not holding that there was enough evidence to pinpoint as such unless there was true facts.⁵³

From the information above, it can be seen that process of enforcement of law and relevant measures through the enforcement mechanism carried on by a public entity or an independent agency, and the self-monitoring mechanism carried on the private sector lacks efficiency and results a great deal.

While there is a joint-monitoring process such as those in the U.K. and Australia, there has been an attempt to integrate all processes, though the ongoing process has not been complete. Especially in the U.K., Ofcom, which is a public organization, acts as an office that opens for complaints only. All complaints will be transferred to ASA for the facts finding process. After the investigation of facts is done, Ofcom returns to the process for the review.⁶⁸ Such practice does not flow continuously, resulting in great delay. In Australia, ACMA, which is also a public organization, receives complaints. However, in the private sector or industry, AANA may also receive complaints. Both offices can carry on investigation, review and impose punishment. The difference is the organizations in the private sector must review the complaint within 30 days. Otherwise, they have to transfer the case to ACMA or ASB (an entity in the private sector or the industry).⁶⁹ This Australian approach causes overlapping process between the responsible entities. Nevertheless, the joint-monitoring process has a bright side as entity may receive more complaints from various functioning entities. In addition, the public entity may impose a check on the process carried on by an entity in the private sector.

However, in Thailand the Food and Drug Administration (FDA) has arranged activities including information transfer, campaigns and public relations to promote and support legal enforcement such as entering into MOU with the Thai Journalists Association and The Economic Reporters Association, to activate examination of advertising permits before broadcasting.⁶² There was also an initiative to arrange road shows in Bangkok and surrounding provinces and inform the society about persuasion that the industry uses. There are also warnings such as warning not to believe over-stating advertisement,⁷⁰ strict product control, Facebook check, to prevent consumers from being deceived by an ads. The general public may participate in the consumer protection process and report to Hotline 1556 for a prize.⁷¹ This is considered a great attempt of the Thai government to enforce the law.

Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages





Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages



Words of Request

Recommendations to increase intensity of the iron rules

The possible way to develop, improve, or amend Thai law and relevant measures involving advertising of food and beverages containing high level of sugar, fat and sodium should be carried on as follows:

1. The extension of rules, communication channels, duration and method for food and beverage advertising, especially for the control on food and beverage advertising, should be done clearly and suitably within the scope of the Broadcasting and Television Businesses Act B.E.2551 (2008). Such process should be expedited, and specific law should be enacted in order to initiate control advertising of food and beverages containing high level of sugar, fat and sodium to children, especially on television. The rules should classify the types of television programs and products (food and beverages) to single out ones that cannot be advertised by law. It should contain prohibitive provisions such as prohibition on taking advantage of children's lack of experience, and prohibition on persuading children or parents to buy a product.

2. The punishment terms should be more severe in order to punish and deter the wrongdoer and prevent repeated action.

3. Each organizations or association involving journalism and career on advertising, public relations, marketing and broadcasting businesses, should set out Code of Ethic (COE) and Code of Conduct (COC) to be a tool for strict inter-organizational monitoring on the production of media, advertisements and marketing communication in the case of

food and beverages containing high level of sugar, fat and sodium. The COE and COC will enforce those activities to be done ethically and responsibly to the society.

4. Involving offices should set out rules and monitoring mechanisms that is as up-to-date to the current strategy on advertising and marketing communication for food and beverages containing high level of sugar, fat and sodium in children. Also, the co-regulating mechanism and self-regulating mechanism should be set up together to increase efficiency in monitoring advertising of food and beverages containing high level of sugar, fat and sodium to children.

5. Involving offices should appoint a national committee to set out strategic plans to keep an eye on media, advertising and marketing communication of food and beverages containing high level of sugar, fat and sodium in children. The mechanism driven by professional associations, academic institutions, the civil society, and organizations for development of the private sector, and the review mechanism done by offices having authority by law, should also be set out.

6. The work of all involving offices should be integrated. These offices include the Food and Drug Administration (under the Ministry of Public Health), the Consumer Protection Board, the National Broadcasting and Telecommunication Commission, and the Thai Health Promotion Foundation. The objective lies on serious law enforcement, control and monitoring, and checks on advertising and labeling in the food and beverage businesses and industry.

7. The government should encourage the civil society and consumer protection activist groups to take part in policy-making and legislative drafting process, especially on advertising watch in the case of food and beverages containing high level of sugar, fat and sodium through every typed of media and channel.

8. A review result should be reported and released to the general public through the press.

Waking the Tiger : Controlling Advertising of 3 HIGHS Food and Beverages



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Only law with reason is praised

Anonymous