

## Back to School Essentials: Do's and Don'ts of Advertising Food to Children in Canada

### In brief

It is frequently observed that children are especially impacted by advertising and special attention must be paid when marketing to them. Historically, with the exception of Quebec, which has prohibited virtually all forms of commercial advertising directed at children under the age of 13 since 1980, Canada did not specifically restrict advertising targeted at children. However, driven by growing concerns due to increases in obesity and chronic diseases, plans have now emerged to tackle these issues, including three recent developments enacted by the food and beverage industry, the federal Parliament and Health Canada respectively. While each of these developments aims to curb food and beverage advertising to children, how these initiatives will work together, and how effective they will be, remain to be seen. In the meantime, as the regulation of advertising directed at children takes centre stage, it will be important for businesses to consider their advertising practices in Canada if they manufacture or distribute foods high in sodium, sugars and/or saturated fats and seek to advertise them in specific media such as television and digital platforms. For now, it appears that advertising directed at children in on-premises communications will continue to be comparatively unregulated.

### In depth:

#### Background

Although recent developments suggest advertising directed at children has only lately become a priority, the topic has been a focus of policy attention for over a decade. For example, in 2007, leading food and beverage companies launched the Canadian Children's Food and Beverage Advertising Initiative (**CAI**), a voluntary program establishing principles for food and beverage advertising directed to children. The CAI adopted uniform nutrition criteria in 2016 resulting in many participants reformulating their products or changing the focus of their advertising.

Despite these industry efforts, Health Canada has expressed the view that self-regulatory approaches may not be effective in meaningfully reducing children's exposure to food and beverage advertisements. As a result, in 2016, the federal Minister of Health launched the Healthy Eating Strategy, a key component of which was to restrict food and beverage advertising to children. The same year the Minister introduced Bill S-228, an *Act to amend the Food and Drugs Act*, which aimed to prohibit food and beverage marketing directed at children in the belief that these advertisements contribute to child obesity in Canada.

Bill S-228 faced significant pushback on the basis that there was no evidence that exposure to specific types of food advertising contribute to obesity in children, and ultimately failed to be adopted in 2019 prior to the 2019 Canadian federal election.

#### Recent Developments

Despite the failure of Bill S-228, the Canadian government and industry continued working towards developing restrictions on food and beverage advertising directed at children. Since 2019 there have been three major initiatives:

1. Private Member's Bill C-252, *An Act to amend the Food and Drugs Act (prohibition of food and beverage marketing directed at children)* (**Bill C-252**), which was introduced in February 2022 and is currently before Parliament.



2. Health Canada's proposed Policy update on restricting food advertising primarily directed at children (the **Proposed Policy**), which was released on April 25, 2023, and, subject to consultation, is expected to be implemented under existing regulatory authorities (e.g., the *Food and Drugs Act*), or new authorities if Bill C-252 receives Royal Assent.
3. The Code for the Responsible Advertising of Food and Beverage Products to Children, developed by Ad Standards, an industry self-regulatory body, which took effect on June 28, 2023 (the **Food and Beverage Code**).

The following summarizes and compares each of the three initiatives, which impose broadly similar restrictions on food and beverage advertising to children:

Requirements	Bill C-252	Proposed Policy	Food and Beverage Code
<b>Restriction</b>	No person shall advertise restricted foods in a manner that is primarily directed at children		
<b>Age of "children"</b>	Individuals under 13 years of age		
<b>"Restricted" Food and Beverages</b>	Foods that contain more than certain levels of sugars, saturated fat or sodium, with such levels to be prescribed by regulation.	<p>Foods with:</p> <ul style="list-style-type: none"> <li>• added sodium,</li> <li>• free sugars (e.g., added sugars and sugars naturally present in honey, syrups, fruit juice and fruit juice concentrates); or</li> <li>• added fat</li> </ul> <p>that exceed the "low in X" nutrient content claim thresholds for sodium, sugars and/or saturated fats. These nutrient thresholds are equivalent to 6% of the daily value ("DV") for sodium, 5% of the DV for sugars and 10% of the DV for saturated fat prescribed in regulation.</p>	<p>Foods that exceed the "low in X" nutrient content claim thresholds for sodium, sugars and/or saturated fats set out in the Food and Beverage Code, which are similar to the thresholds set out in Health Canada's <i>Table of permitted nutrient content statements and claims</i>, which in turn is incorporated by reference into the <i>Food and Drug Regulations</i>.</p> <p>Certain unique nutrient criteria also apply to certain foods. For example, to be advertised to children, a one-serving cup of breakfast cereal:</p> <ul style="list-style-type: none"> <li>• cannot have:                             <ul style="list-style-type: none"> <li>• 230 mg of sodium,</li> <li>• 1.5 g of saturated fat,</li> <li>• 12 g of sugar, or more; and</li> </ul> </li> <li>• must have at least 8 g of whole grains, at least 2 g of fibre; or at least 15% of the daily value of any essential nutrient except sodium.</li> </ul>
<b>Applicable Advertising Medium</b>	Not yet determined; to be prescribed by regulation. However, in light of Health Canada's Proposed Policy and the Food and Beverage Code, we expect the Bill to apply, at a minimum, to television and digital media advertising.	Television and digital media only.	All media <u>including</u> foreign-produced content purchased by an advertiser in Canada to reach residents of Canada, but <u>excluding</u> displays, in-store flyers, posters, menus, menu boards, point-of-sale material and other on-premises communications.



<p><b>Criteria for Determining if an Advertisement is "Primarily Directed at Children"</b></p>	<p>Not yet determined; to be prescribed by regulation.</p>	<p>Two key factors:</p> <ol style="list-style-type: none"> <li>1. the nature and intended purpose of the medium where the advertisement is communicated; and</li> <li>2. whether the advertisement targets, or is reasonably expected to appeal particularly to, children.</li> </ol>	<p>The context and presentation of the advertisement, in particular:</p> <ol style="list-style-type: none"> <li>1. the nature and intended purpose of the food or beverage product advertised;</li> <li>2. the manner of presenting the advertisement; and</li> <li>3. the time and place it is shown.</li> </ol>
<p><b>Next Steps</b></p>	<p>Bill C-252 is currently at third reading in the House of Commons and if passed, will go before the Senate for debate and approval.</p>	<p>The consultation on the Proposed Policy closed on June 19, 2023. It is expected that Health Canada will publish a final policy based on the comments received, which will ultimately be codified.</p>	<p>The Food and Beverage Code is now in effect; while not law, compliance may be required in some cases (e.g., where advertising preclearance from Ad Standards is required).</p>

**Do's & Don'ts**

When developing a food or beverage advertisement where the subject of the advertisement is a restricted food pursuant to the Food and Beverage Code, the Proposed Policy, or Bill C-252 (once in effect), advertisers should consider taking affirmative steps to ensure they are **doing** the following:

- Considering if an advertisement is specific to a food or beverage product or only generally references a brand (as the restrictions generally only apply to advertisements for specific foods).
- Determining if the food or beverage product being advertised is explicitly "restricted" or is similar to identified examples of foods that are typically restricted. In the Proposed Policy, Health Canada has given examples of types of foods that are not restricted (such as whole or cut vegetables and fruit, plain milk and yogurt, plant protein-rich foods such as beans and lentils) and those foods and beverages that are restricted (e.g., regular soda, most cookies, cakes, pies, sweets, pudding, and ice cream).
- Considering the advertisement holistically to determine if it is "primarily directed at children", giving particular attention to:
  - the nature and intended purpose of the advertisement and advertised food or beverage product;
  - the time and place the advertisement is shown;
  - the general impression created by the advertisement, including in particular the language used (i.e., child-friendly language), the use of visual, audio and special effects, and themes that appeal especially to children (e.g., fun, magic, fantasy, adventure, playing with friends); and
  - any elements that are more likely to appeal to children compared to the general public, such as characters from children's TV shows, movies, books, toys, etc.; brand characters that are children or have child-like characteristics; and cross-promotion with children's movies, programs, games or toys.
- Complying with general advertising requirements that prohibit making false or misleading representations, which apply to all advertisements, whether or not targeted at children.

Advertisers of "restricted" food and beverage products should ensure that they do **not** engage in the following:

- Advertising in elementary or middle schools (through grade 8), regardless of the nutrition profile of the product (i.e., whether or not it is explicitly restricted);



- Engaging in product placement in any entertainment or editorial content in any medium primarily directed to children;
- Urging children to buy a food or beverage product (or asking their parents to buy the food or beverage).
- Employing targeting techniques such as demographic or interest-based information specifically to reach children;
- Offering any incentives or premiums specific to children; and
- Using engagement techniques targeted at children.

As these developments continue to unfold, it will be imperative for food and beverage businesses to keep a close eye on this space and consider how changes in law and guidance may affect advertising going forward, notably but not limited to where products are only intended for or may have special appeal to children.

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