



Junk Food Advertising in Canada: How Should it be Regulated?

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union
des consommateurs

Produced by:

- Union des consommateurs

Research:

- Élisabeth Gibeau

Editorial management:

- Marcel Boucher

The masculine is used generically in this report.



7000, avenue du Parc, bureau 201
Montréal (Québec) H3N 1X1
Téléphone : 514 521-6820
Sans frais : 1 888 521-6820
Télécopieur : 514 521-0736
info@uniondesconsommateurs.ca
www.uniondesconsommateurs.ca

**Organizational Members
of Union des consommateurs :**

ACEF Appalaches-Beauce-Etchemins
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Union des consommateurs, *Strength through Networking*

Union des consommateurs (UC) is a not-for-profit organization that brings together 13 consumer advocacy groups.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its work revolves around the values cherished by its members: solidarity, fairness and social justice, as well as the improvement of consumers' living conditions from an economic, social, political and environmental standpoint.

UC's structure allows it to maintain a broad view of the stakes in consumer issues while developing keen expertise in certain areas, notably its research into new problems faced by consumers; its actions, of a national scope, are supported and legitimized by field work and the establishment of member associations in their communities.

UC acts predominantly at a national level by representing consumer interests in dealing with various political, regulatory or legal authorities and in the public sphere, or through class action suits. Among the concerns most thoroughly researched, acted upon or represented are the family budget and indebtedness, energy, issues related to telephony, broadcasting, cable television and the Internet, health, financial products and services, and social and fiscal policies.

Introduction

As author and journalist Eduardo Galeano states:

The consumer masses receive orders in a universal language: advertising succeeded where Esperanto could not. Anyone, from anywhere in the world, understands ads on television. Over the past 25 years, advertising expenses have doubled around the world. As a result, poor children drink increasingly more cola and less milk, and leisure time becomes the time to consume¹. [Translation]

In 2006, a study by Union des consommateurs (UC) concluded that it was vital to “intervene to regulate advertising intended for children if the food-processing industry cannot be persuaded to act responsibly.” We added: “The consequences of a bad diet for those who will inherit our society could be devastating and irreversible. It is long overdue to act in a firm and thoughtful manner to attempt to end this epidemic.²” Thirteen years later, the issue is more relevant than ever.

In fact, the World Health Organization (WHO) acknowledges that today’s food environment is vastly different from the one known by previous generations³ and talks about a global obesity epidemic, which is growing in Canada. Health Canada reports that over 30% of the total calorie intake of Canadian children comes from food not recommended by the Canada Food Guide⁴.

It is therefore crucial to work on protecting children as particularly vulnerable consumers. Our member organizations in fact confirm that a large part of the food budget is spent on poor-quality foods, as parents give in to the insistent demands of their children, influenced by marketing and a lack of information.

After a consultation on the topic in summer 2017, Health Canada will be issuing recommendations to favour the adoption of healthy eating habits by children by regulating food marketing in Canada to a greater extent, for instance. A bill introduced in the Senate in 2016 proposed a ban on advertising of “unhealthy food”⁵ directed at children aged 13 and under is facing a final vote. In short, the federal government appears willing to take action on the issue, but a major lobby group appears determined to maintain the status quo⁶. We believe that it is important that our voice also be heard on the issue.

¹ GALEANO, Eduardo, *L’empire de la consommation – La planète comme shopping center*, May 22, 2007. <https://www.mondialisation.ca/l-empire-de-la-consommation/5724>

² UNION DES CONSOMMATEURS, *Marketing Junk Food to Children*, Montreal, Union des consommateurs, June 2006, <https://uniondesconsommateurs.ca/marketing-de-la-malbouffe-pour-enfants/>

³ WORLD HEALTH ORGANIZATION, *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*, Geneva, World Health Organization, 2010, p. 4.

https://apps.who.int/iris/bitstream/handle/10665/44416/9789241500210_eng.pdf?sequence=1&isAllowed=y

⁴ CANADA, HEALTH CANADA, *Toward Restricting Unhealthy Food and Beverage Marketing to Children – Discussion paper for public consultation*, Ottawa, Health Canada, June 2017, p. 4.

⁵ BILL S-228, *An Act to Amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children)*, September 28, 2017. <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-228/third-reading>. As its name indicates, Bill S-228 covers food and beverages; it will be up to the act to define ‘unhealthy food’ or to establish the factors to consider in determining whether a given food is unhealthy.

⁶ PARÉ, Isabelle. “Lobby, Sénat et malbouffe,” in *Le Devoir*, November 30, 2018. <https://www.ledevoir.com/politique/canada/542596/interdiction-de-la-publicite-sur-la-malbouffe>

Whereas arguments against junk food advertising are frequently health-related, namely, the impact on health of foods that are too high in salt, fat or sugar which it is promoting, we believe that addressing the issue from a consumer standpoint will expand knowledge and existing studies. Based on some of the United Nations Guidelines for Consumer Protection and, in particular, the right to safety, information and free choice, we therefore wish to recommend to the federal government the best possible regulation of advertising aimed at children.

Several countries have chosen to regulate advertising to children, although without all using the same approach: some jurisdictions only regulate junk food advertising or only ads for certain products in specific places, such as schools or public transit. For its part, by totally prohibiting advertising to children (with a few exceptions), Quebec is in fact prohibiting junk food advertising. Would this be an efficient way to also combat the harmful effects of junk food elsewhere in Canada, while addressing the general harmful effects of advertising aimed at children, regardless of the type of advertising?

This is what we will be looking at in this study.

First, we will present the consumer rights that must be considered in relation to this issue. Next, we will cover the current regulations on advertising to children in Canada and Quebec before looking at other countries. Based on the determinations of these first two chapters, we will conclude with our recommendation and justification for it.

1. Protecting Particularly Vulnerable Consumers: Children

It may be debatable whether children should be considered as consumers before the age of adulthood. However, considering their influence in household purchases (40%, according to Coalition Poids⁷) and the fact that the world advertising industry⁸ and world food industry clearly consider them as such, we will do the same for the purposes of this study. In any event, they are surely the consumers of tomorrow and heavily conditioned to become so.

Guidelines for Consumer Protection

In 1985, the World Health Organization (WHO) adopted a set of guidelines that “set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems⁹.” In its resolution of 2015 that adopts the revised text of the United Nations Guidelines for Consumer Protection¹⁰, the General Assembly mentions that 30 years after they were first adopted, several guidelines still need to be efficiently implemented. Among its recitals, the resolution states the following:

[A]cknowledging the enduring need for Member States to further strengthen the protection of consumers, the General Assembly remains committed to addressing the impact of development on markets and of technology on consumers;

Acknowledging that, although significant progress has been achieved with respect to the protection of consumers at the normative level since the adoption of the guidelines in 1985, such progress has not been consistently translated into more effective and better-coordinated protection efforts in all countries and across all areas of commerce¹¹;

The main guidelines of this “charter of consumers’ rights” include that aimed at meeting certain legitimate needs, including:

- The protection of vulnerable and disadvantaged consumers;
- The protection of consumers from hazards to their health and safety;
- Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs¹².

⁷ COALITION POIDS, *Food Marketing – Overview*. <https://www.cqpp.qc.ca/en/our-priorities/food-marketing/overview/>

⁸ For instance: GOLETY, Mathilde. *Quelle rationalité pour l'enfant-consommateur? Prise en compte et incidence de la rationalité des enfants dans les recherches sur l'enfant-consommateur*, Management&Avenir, August 2011, p. 135. <https://www.cairn.info/revue-management-et-avenir-2011-8-page-135.htm>

⁹ UNITED NATIONS, *Guidelines for Consumer Protection*, New York, United Nations, 2016, p. 3. https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf. First adopted by the General Assembly in its resolution 39/248 of 16 April 1985, the United Nations Guidelines were heard by the Economic and Social Council in its resolution 1999/7 of 26 July 1999, before being revised and adopted by the General Assembly in its resolution 70/186 of 22 December 2015.

¹⁰ UNITED NATIONS, *Resolution adopted by the General Assembly on 22 December 2015, Resolution 70/186 Consumer Protection*, December 22, 2015. https://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf

¹¹ *Ibid.* p. 2/20.

¹² *Ibid.* p. 5/20.

The resolution also includes, among its general guidelines, the necessary involvement of the Member States, reiterating concern for more vulnerable consumers:

*Member States should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty*¹³.

In the pages that follow, we will see that the concerns raised in these chosen excerpts apply particularly well to the subject of this study.

Application of UN Guidelines to junk food advertising aimed at children

The imbalance between market forces and the vulnerable consumers that children constitute, as regards junk food advertising, has long been criticized, to such an extent that some are now talking about a crisis¹⁴. The result is insufficient protection of children and lack of observance of several of their rights, which is also decried by Consumers International and the World Health Organization, among others¹⁵.

Right to information: through various strategies, the food industry tries to conceal the nutritional information on its junk food products to prevent consumers, including children, from seeing their true health effects. “Consumers need information to make responsible decisions. Yet the restaurant industry fights efforts requiring calorie values on restaurant menus, and marketers use stealth, viral, and guerilla marketing campaigns to conceal marketing intents¹⁶.”

Right to free choice: Without all the relevant information on a food product, including nutritional information and the sugar, salt and fat content, consumers are unable to make a free and informed choice. However, studies show a conclusive causal link between the food industry’s promotional activities and young people’s food-related knowledge, behaviours and preferences¹⁷.

¹³ *Ibid*, p. 6/20.

¹⁴ The expression “Crisis in the marketplace” comes from an article by HARRIS JL, Pomeranz JL, Lobstein T, Brownell KD, “A crisis in the marketplace: how food marketing contributes to childhood obesity and what can be done,” in *Annual Review of Public Health*, Vol. 30, April 2009, p. 211-225, in *Annual Reviews*, <https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.031308.100304>

¹⁵ CONSUMERS INTERNATIONAL, “Recommendations towards a Global Convention to protect and promote healthy diets,” 2014, Article 9, <https://www.consumersinternational.org/media/2211/recommendations-for-a-convention-on-healthy-diets-low-res-for-web.pdf> And WORLD HEALTH ORGANIZATION, “Set of recommendations on the marketing of foods and non-alcoholic beverages to children,” 2010, <http://www.who.int/dietphysicalactivity/publications/recsmarketing/en/index.html>

¹⁶ SUSTAIN, *Children’s food and health: why legislation is urgently required to protect children from unhealthy food advertising and promotions*, London, Sustain, March 2004. https://www.sustainweb.org/pdf/child_food_health.pdf

¹⁷ UFC-Que choisir, *Marketing télévisé pour les produits alimentaires à destination des enfants : analyse des engagements des professionnels et impact sur les comportements alimentaires*, 2010. <https://www.quechoisir.org/dossier-de-presse-marketing-televisé-pour-les-produits-alimentaires-a-destination-des-enfants-analyse-des-engagements-des-professionnels-et-impact-sur-les-comportements-alimentaires-n13073/>

Right to safety: Children's safety is threatened by the current global obesity epidemic. The link between obesity and the food industry's marketing practices has been repeatedly confirmed in recent years¹⁸.

How did we reach the point where so much food and beverage advertising is directly aimed at children, who do not actually purchase the food products being advertised? The strategy of major international brands, in particular, involves creating a relationship with current and future consumers, a process that begins from childhood. "A lifetime customer may be worth \$100,000 to a retailer, making effective 'cradle-to-grave' strategies extremely valuable¹⁹."

As Roy Bergold, head of advertising at McDonald's from 1969 to 2001, stated: "If you can attract a child aged 4, 5 or 6 to McDonald's, he will probably continue to come once he is a teenager, then an adult, and will then come with his own children [...] if you have \$1 to spend on marketing, spend it on kids²⁰." [Translation]

As a result, the food industry spends a fortune on advertising, most of which is directed at children, and vigorously opposes any restrictive regulatory attempts by countries.

INDUSTRIES THAT USE EXCESSIVE MEANS

The extent of the means used to promote food that is high in sodium, sugar and fat is well known. In the United States alone, the food industry spent US\$1.79 billion in 2009 in food advertising directed at children²¹.

The French consumer rights protection organization UFC Que Choisir conducted a study that confirmed "the correlation between overexposure to advertising and excessive consumption: 26% of children most exposed to advertising are those that ask their parents the most for junk food and eat fatty and sugary foods the most²²" [Translation]. The study also revealed that in France, 80% of food advertising aimed at children and airing between 6:00 a.m. and 9:00 p.m. involved food with a high fat or sugar content.

Similarly, in the U.S., 98% of commercials watched by children involve fatty, sugary or salty products (those generally referred to as "junk food")²³. The effects of this type of advertising have been well documented: children who are exposed to it will choose this type of food in

¹⁸ See, for instance, WORLD HEALTH ORGANIZATION, *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*, Op. cit.; HASTINGS, G. et al., *Review of the research on the effects of food promotion to children*. Glasgow, University of Strathclyde, Centre for Social Marketing, 2003, <http://www.food.gov.uk/news/newsarchive/2003/sep/promote>; HASTINGS, G. et al. *The extent, nature and effects of food promotion to children: a review of the evidence*. Geneva, World Health Organization, 2006, http://whqlibdoc.who.int/publications/2007/9789241595247_eng.pdf; McGinnis JM, Gootman JA, Kraak VI, eds. *Food marketing to children and youth: treat or opportunity?* Washington DC, Institute of Medicine, National Academies Press, 2006 (<http://www.nap.edu/catalog.php>).

¹⁹ LINDSTROM et al., *Brand Child*, Kogan Page Limited, 2003, p. 193.

²⁰ INTARTAGLIA, Julien, *Génération pub: de l'enfant à l'adulte, tous sous influence?*, 2014, de Boeck, 136 pages, p. 82.

²¹ FEDERAL TRADE COMMISSION, *A Review of Food Marketing to Children and Adolescents; Follow-Up Report*, December 2012, p.ES-1. <https://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf>

²² UFC QUE CHOISIR, Op. cit.

²³ POWELL, L.M. et al., "Nutritional content of television food advertisements seen by children and adolescents in the United States," 2007, in *Pediatrics* 120(3), p. 576-583.

a much higher proportion than those who are not²⁴, and this preference will have repercussions on the obesity rate²⁵. “Food promotion has a causal and direct effect on children’s food preferences, knowledge, and behavior,” wrote Livingstone in a 2005 article in the *International Journal of Advertising*²⁶.

A study published in 2011 reported the results of three meta-analyses that reached the same conclusions:

While the etiology of childhood obesity is multi-faceted, three recent systematic reviews of the literature have concluded that commercial food advertising aimed at children directly affects children’s food preferences, short-term consumption patterns and food purchase requests²⁷.

STRONG OPPOSITION TO ANY RESTRICTIVE MEASURES

The idea of regulating the marketing of food products to children to combat obesity has been proposed and justified by researchers for several years now.

Reducing food marketing to children has been proposed as one means for addressing the global crisis of childhood obesity, but significant social, legal, financial, and public perception barriers stand in the way. The scientific literature documents that food marketing to children is a) massive; b) expanding in number of venues (product placements, video games, the Internet, cell phones, etc.); c) composed almost entirely of messages for nutrient-poor, calorie-dense foods; d) having harmful effects; and e) increasingly global and hence difficult to regulate by individual countries²⁸.

To avoid having to comply with more stringent regulations, industry has preferred, whenever allowed to do so, to implement self-regulatory measures. In its 2016 resolution on nutrition, obesity and diet-related diseases, in the section on advertising to children, the Trans Atlantic Consumer Dialogue talked about the failure of the application of such self-regulation in the U.S.:

In response to growing criticism, food corporations have embarked upon various “self-regulatory” efforts in recent years. In 2006, major U.S. food companies launched the Children’s Food and Beverage Advertising Initiative (CFBAI), which seeks to change the nutritional profile of foods and beverages marketed to

²⁴ COON, C.A. and Tucker, K.L., “Television and children’s consumption pattern. A review of the literature,” 2002, in *Minerva Pediatrica*, 54, p. 423-436.

²⁵ HARRIS, J.L. *et al.*, “Priming effects of television food advertising on eating behavior,” 2009, in *Health Psychology* 28, p. 404-413.

²⁶ LIVINGSTONE, S., “Assessing the research base for the policy debate over the effects of food advertising to children,” 2005, in *International Journal of Advertising*, p. 283. Sonia Livingstone is a professor of social psychology at the Department of Media and Communications of the London School of Economics and Political Science.

²⁷ POTVIN-KENT, Monique and DUBOIS, Lise, “Food marketing on children’s television in two different policy environments,” 2010, in *International Journal of Pediatric Obesity*, https://www.researchgate.net/publication/47728650_Food_marketing_on_children%27s_television_in_two_different_policy_environments

²⁸ HARRIS JL *et al.*, “A crisis in the marketplace,” *Op. cit.*

children. The following year, a number of these same companies joined a common voluntary commitment on marketing known as the EU Pledge. These voluntary initiatives have made some progress on limiting food marketing to children. For example, in the U.S., the CFBAI released uniform nutrition criteria to be implemented by all member companies by December 31, 2013. However, industry has applied inconsistent standards regarding which age groups, mediums, foods, and marketing techniques are covered, and not all companies have participated in these voluntary initiatives. In addition, the practice of self-monitoring by companies in these initiatives, which tends to yield findings of good results and excellent compliance, poses conflict-of-interest concerns. As a result, many companies continue to advertise on television and use other media directed towards children, such as interactive online “advergames” that encourage children to “share” advertising materials with other children via email, to sell unhealthy food. These efforts include brand promotion within schools and the school environment²⁹.

WHO is also very critical of this approach:

There is a clear divide between the type of regulation favoured by many health and consumer groups and that favoured by self-regulatory organisations (SROs) and the food industry. The International Association of Consumer Food Organisations (IACFO) argues that allowing industry to regulate children’s advertising is inherently problematic: industry guidelines are too television-centric, they do not deal with the compound effects of advertising, and they have insufficient sanctions. The United States-based advocacy group, Center for the Science in the Public-Interest (CSPI) describes self-regulation as a case of “foxes guarding the hen-house”³⁰.

At the same time, the industry’s strategy also seems to be to divert the attention of governments by attempting to have individuals rather than countries shoulder the responsibility for finding a solution to the global obesity crisis. Hence, some brands have not hesitated to invest millions to spread, through a non-profit organization presumably focused on research into the causes of obesity³¹, a pseudo-scientific discourse aimed at diverting the population’s attention from the harmful effects of their products:

For a number of years, this organization [Global Energy Balance Network] brings together influential scientists who are propagating a “solution” to the global obesity epidemic through articles published in medical journals, presentations at conferences, and through social media. Be more active without being overly concerned about reducing your caloric intake: this is what these experts are saying, contrary to public health specialists, while overlooking the role of diet and instead focusing on the lack of physical activity³². [Translation]

²⁹ TRANS ATLANTIC CONSUMER DIALOGUE, *Resolution on Nutrition, Obesity, and Diet-Related Disease*, January 20, 2016, p. 2. http://tacd.org/wp-content/uploads/2015/01/TACD-Resolution_Diet-Related-Disease_January-2016.pdf

³⁰ HAWKES, Corinna. *Marketing Food to Children: the Global Regulatory Environment*, WHO 2004, p. 13. http://www.who.int/dietphysicalactivity/publications/regulatory_environment_2004/en

³¹ STONE, Kathlyn, “Internal documents show Coke had profits in mind when it funded nutrition ‘science’,” *healthnewsreview.org*, March 28, 2018, <https://www.healthnewsreview.org/2018/03/internal-documents-show-coke-had-profits-in-mind-when-it-funded-nutrition-science/>

³² HOREL, Stéphane, “Enquête sur la science sous influence des millions de Coca Cola,” *Le Monde*, May 8,

The success of such talk about personal responsibility clearly shows the political weight of food industry giants and the use of such a philosophy as a strategy to protect them from regulation³³. Insisting on the lack of information provided by the industry on calories consumed, researchers state that “It is ironic that industry emphasizes personal responsibility while often undermining consumers’ ability to be responsible³⁴.”

VULNERABLE CONSUMERS: EVIDENCE PROVIDED BY NEUROSCIENCE

Recent developments in neuroscience have also led to studies on the effects of advertising on the brain, and show that children’s brain development prevents them from making well-considered decisions when watching advertising, and that they are especially vulnerable to the desires and needs created by advertising.

Magnetic resonance imaging tests were used to determine the areas of the brain that are activated when a person is exposed to advertising. The results have shown that advertising and logos, like the image of the food itself, activate the brain regions associated with motivation, both in adults and children.

[S]tudies on children’s brain responses to actual food images have implicated similar brain regions as those identified in adults. [...] In healthy weight children, one fMRI [functional magnetic resonance imaging] study compared brain activations in response to appetizing food images when children were hungry and when they were satiated. Increased activations to food images were reported in insula, amygdala, medial frontal cortex and OFC, which are similar to adult findings³⁵.

[References omitted]

To respond to the specific characteristics of a young target audience, marketing specialists have been using psychologists for a number of years to develop the desired relationship between a young child and a certain brand, a practice that has been criticized:

The use of psychologists in drawing up marketing strategies aimed at children was in fact strongly condemned in 1999 by about 60 members of the American Psychological Association (APA) who, through a public letter, were asking the APA to amend the Code of Ethics to limit the participation and involvement of psychologists in this practice. One of the recommendations in the letter was that the APA launch an extensive awareness campaign on the potential harm and danger of advertising directed at children³⁶. [Translation]

2019, https://www.lemonde.fr/planete/article/2019/05/08/enquete-sur-la-science-sous-influence-des-millions-de-coca-cola_5459509_3244.html

³³ HARRIS JL. *et al.* “A crisis in the marketplace,” *Op. cit.*, 211-225.

<https://www.annualreviews.org/doi/full/10.1146/annurev.publhealth.031308.100304>

³⁴ HOREL, Stéphane, “Enquête sur la science sous influence,” *Op. cit.*

³⁵ BRUCE, Amanda *et al.*, “Branding and a child’s brain: an fMRI study of neural responses to logo,” December 14, 2012, *Social Cognitive and Affective Neuroscience*, Volume 9, Issue 1, January 1, 2014, p. 118-122, <https://doi.org/10.1093/scan/nss109>

³⁶ Union des consommateurs, *The Marketing of Junk Food to Children*, *Op. cit.*, pp. 19-20.

The concept of cognitive resistance in educational neuroscience is also relevant in connection with the notion of vulnerable consumer. The brain develops a number of automatic thoughts as part of a heuristic system that allows it to save time by making certain intuitive and fast associations. The algorithmic system, for its part, enables thinking and logic. A third system, positive inhibition, serves as sort of 'referee' between the first two systems and ensures that the automatic thoughts will not take over in situations where the use of logic is required. This inhibition system is dependent on the maturation of the prefrontal cortex and, while the first two systems develop in parallel from birth, the positive inhibition system only develops later during childhood³⁷. Understanding advertising requires the development of abilities linked to the prefrontal cortex. However, as stated by Professor Steve Masson, director of UQAM's *Laboratoire de recherche en neuroéducation*, "several studies show that abilities associated with the prefrontal cortex (such as attention, control and planning) develop progressively until early adulthood³⁸." [Translation]

Given the above, it appears clear that children are not capable of exercising their right to information, safety and free choice when faced with incentives to consume unhealthy foods that use increasingly sophisticated techniques, which tend to be controlled simply through self-regulation of the industries involved and against which children are powerless.

In fact, in the next chapters, we will be looking at the regulations in effect in Canada and Quebec, along with those that have been adopted in four countries: France, Sweden, Norway and the United States. A review of the regulations will lead to a few observations that will help us draw up recommendations to conclude our study.

³⁷ ELUSSE, Sophie, "Résistances cognitives et apprentissages," *Grandir autrement*, No. 55, November-December 2015. <https://studylibfr.com/doc/4401179/résistance-cognitive-et-apprentissages>

³⁸ UC, May 2019 interview.

2. Overview of Existing Regulations in Canada and Quebec

Existing regulations in Canada (federal government)

In Canada, advertising aimed at children is regulated voluntarily through a set of codes managed by the industry itself (advertising or food).

Canada has therefore mostly chosen self-regulation until now, but the federal government is currently conducting a broad consultation on the possibility of otherwise regulating a certain type of advertising, namely the advertising of junk food to children.

There are in fact certain statutes, regulations and guidelines that govern advertising in Canada. For instance, the *Broadcasting Act* regulates the type of advertising and permitted time on air; the *Competition Act* contains provisions related to deceptive marketing practices and false or misleading representations; while a few provisions of the *Food and Drugs Act* and the *Consumer Packaging and Labelling Act* also touch upon the issue (foods being expressly exempt from the latter's application).

Here are the broad provisions found in the *Food and Drugs Act*³⁹ that directly pertain to advertising; nothing specifically pertains to children, who are effectively part of the target audience affected by the following provisions:

- Definition of advertisement: includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device.
- Section 3 (1): No person shall advertise any food, drug, cosmetic or device to the general public as a treatment, preventative or cure for any of the diseases, disorders or abnormal physical states referred to in Schedule A.
- Section 5 (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.
- Section 30 (1)b(i): The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and, in particular, but without restricting the generality of the foregoing, may make regulations: **b)** to prevent the purchaser or consumer thereof from being deceived or misled in respect of the design, construction, performance, intended use, quantity, character, value, composition, merit or safety thereof, or to prevent injury to the health of the purchaser or consumer; **(i)** respecting the labelling and packaging and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices.

In the *Food and Drug Regulations*⁴⁰, a number of provisions stipulate mandatory or

³⁹ *Food and Drugs Act* (R.S.C. (1985), c. F-27)

⁴⁰ *Food and Drug Regulations* (CRC, ch. 870). Sections A.01.067 and A.01.068 exclude from the application of sections 3(1) and 3(2), under certain conditions, advertising of a drug as a preventative. Many other food-specific advertising provisions found in Part B.

prohibited indications in “ads” regarding nutritional value, calories, vitamins, claims, etc. of foods.

Canadian advertising, including advertising to children, is thus primarily regulated by the Canadian Code of Advertising Standards. Since 1974, the Canadian Radio-television and Telecommunications Commission (CRTC) requires compliance with the above Code as a condition for obtaining a broadcasting licence.

The Canadian Code of Advertising Standards

The mission of Ad Standards, a non-profit organization created by the industry, is to promote public trust in advertising and ensure the integrity and viability of advertising in Canada through industry self-regulation⁴¹.

To do so, Ad Standards operates on three fronts: 1) It administers the Canadian Code of Advertising Standards (the Code⁴²); 2) manages the consumer complaint process; and 3) provides a fee-based advertising preclearance service in five categories (advertising for children; advertising on food and non-alcoholic beverages; advertising on alcoholic beverages; advertising on non-prescription drugs and advertising on cosmetics) to ensure compliance with legal or regulatory requirements in some industry sectors.

The Ad Standards board of directors is made up of advertisers, advertising agencies and media outlets. A seat is also reserved for a member of the public⁴³, currently held by Peggy Barnwell, marketing professor at Sheridan College.

Last updated in 2016, the Code contains 14 clauses, along with guidelines. Its aim is to “set the criteria for acceptable advertising in Canada. [...] [Its] provisions form the basis for the review of consumer and special interest group complaints, and trade disputes⁴⁴.”

The Code handles criteria aimed at confirming the accuracy and clarity of an advertisement (Clause 1); detecting disguised advertising techniques (Clause 2); preventing price claims (Clause 3) or ‘bait and switch’ cases (Clause 4). In addition, in Clauses 5 to 11, the Code strives to regulate the clarity of guarantees, comparative advertising, testimonials, professional or scientific claims, imitations, safety and exploiting superstitions and fears. Clause 14 covers unacceptable depictions and portrayals (that use violence or forms of discrimination, for instance).

Lastly, clauses 12 and 13 specifically cover advertising to children and to minors:

Clause 12 – Advertising to children: Advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information or illustrations that might result in their physical, emotional or moral harm. Child-directed advertising in the broadcast media is separately

⁴¹ AD STANDARDS, Website. <https://adstandards.ca/about/>

⁴² Ad Standards, *Canadian Code of Advertising Standards*. <https://adstandards.ca/wp-content/uploads/2018/11/Canadian-Code-of-Advertising-Standards.pdf>

⁴³ Note that prior to March 2019, this seat had been reserved for a representative of a national consumer rights advocacy group, but it was not filled.

⁴⁴ Canadian Code of Advertising Standards – The Cornerstone of Advertising Self-Regulation. <https://adstandards.ca/code/>

regulated by The Broadcast Code for Advertising to Children, also administered by ASC. Advertising to children in Quebec is prohibited by the Quebec Consumer Protection Act.

Clause 13 – Products prohibited from sale to minors must not be advertised in such a way as to appeal particularly to persons under legal age, and people featured in advertisements for such products must be, and clearly seen to be, adults under the law.

No clause specifically refers to food or mentions junk food.

The Code also includes Interpretation Guidelines to “enhance industry and public understanding of the interpretation and application⁴⁵” of its clauses. Interpretation Guideline #2 deals with advertising to children. Fairly comprehensive, it details the application of Clause 12 of the Code. Note that point 2.2 mentions healthy food and, by extension, junk food:

2.2 Advertising to children [...] shall be deemed to violate Clause 12 of the Code if the advertising does not comply with any of the following principles or practices:

a. . Food Product Advertising to Children⁴⁶

i. [...] This Code Interpretation Guideline is intended, among other purposes, to ensure that advertisements representing mealtime clearly and adequately depict the role of the advertised product within the framework of a balanced diet, and that snack foods are clearly presented as such, not as substitutes for meals.

b. Healthy, Active Living⁴⁷

i. Advertising to children for a product or service should encourage responsible use of the advertised product or service with a view toward the healthy development of the child.

ii. Advertising of food products should not discourage or disparage healthy lifestyle choices or the consumption of fruits or vegetables, or other foods recommended for increased consumption in Canada’s Food Guide to Healthy Eating, and in Health Canada’s nutrition policies and recommendations applicable to children under 12.

c. Excessive Consumption⁴⁸

i. The amount of product featured in food advertising to children should not be excessive or more than would be reasonable to acquire, use or, where applicable, consume, by a person in the situation depicted.

ii. If an advertisement depicts food being consumed by a person in the advertisement, or suggests that the food will be consumed, the quantity of food shown should not exceed the labelled serving size on the Nutrition Facts Panel (where no such serving size is applicable, the quantity of food shown should not exceed a single serving size that would be appropriate for consumption by a person of the age depicted).

We noted that clauses 2.2 (a) and (b) were adopted in 2004 and 2007, following lively

⁴⁵ *The Canadian Code of Advertising Standards, Op. cit.*

⁴⁶ *Ibid.* Interpretation Guideline adopted in April 2004

⁴⁷ *Ibid.* Interpretation Guideline adopted in September 2007

⁴⁸ *Ibid.* Interpretation Guideline adopted in September 2007

debates in North America and Europe on the effects of food advertising on children.

The Broadcast Code for Advertising to Children (Children's Code)

Advertising aimed at children under the age of 12 is subject to an approval process under the Broadcast Code for Advertising to Children (Children's Code)⁴⁹, created in the early 1970s by the Canadian Association of Broadcasters.

All Children's advertising must conform to the Children's Code, be precleared in accordance with the procedures set out from time to time by ASC and have the requisite ASC clearance number⁵⁰.

Revised in 1993 and updated in 2015, the purpose of the Children's Code, designed to complement the Canadian Code of Advertising Standards, is to "guide advertisers and agencies in preparing commercial messages that adequately recognize the special characteristics of the children's audience⁵¹."

The Children's Code, which also contains 14 clauses, defines *Children's Advertising* as "any paid commercial message that is carried in or immediately adjacent to a children's program [and also] includes any commercial message that is determined by the broadcaster as being directed to children and is carried in or immediately adjacent to any other program." "A child directed message" is cumulatively defined both by its content, which refers to "a commercial message on behalf of a product or service for which children are the only users or form a substantial part of the market as users" and message "(i.e. language, selling points, visuals) presented in a manner that is directed primarily to children."

Based on what is stated in the background, nothing implies that fantasy should be eliminated in children's advertising. "But such presentations should not stimulate unreasonable expectations of product or premium performance." (Our underlining)

The clauses in the Children's Code basically cover the following:

- Factual presentation of products or services (Clause 3: "No children's advertising may employ any device or technique that attempts to transmit messages below the threshold of normal awareness");
- Product prohibitions (drugs or vitamins, and products not intended for use by children);
- Avoiding undue pressure (for instance, not urge children directly to purchase or "urge them to ask their parents to make inquiries or purchases");
- Scheduling (limit repeat ads, no more than four minutes of commercial messages in any one half-hour of children's programming or eight minutes per hour in longer

⁴⁹ Ad Standards, *The Broadcast Code for Advertising to Children* <https://adstandards.ca/wp-content/uploads/2018/09/broadcastCodeForAdvertisingToChildren.pdf>

⁵⁰ *Ibid.* Clause 2; Jurisdiction

⁵¹ *Ibid.* Background.

- children's programs);
- Promotion by program characters, advertiser-generated characters, and personal endorsements (Clause 7(d): "Puppets, persons and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc. in children's advertising");
 - Price and purchase terms, comparison claims;
 - Safety and social values;
 - Regulation of Advertising Standards (assessment, administration, enforcement and jurisdiction).

The Ad Standards' Children's Clearance Committee (or Children's Advertising Section) is responsible for enforcing the Children's Code for all of Canada (excluding Quebec). Its nine members must approve all advertising intended for children, except for ads that are only aired by one station, which is then responsible for ensuring that the ads comply with the Children's Code. The latter stipulates that an advertisement deemed non-compliant cannot be aired, but does not provide for any penalties if this is not observed. Clause 14 simply states that time will be allotted to make an ad that is in breach compliant.

Note that the background that serves as introduction to the Children's Code discreetly justifies advertising as a learning tool for children and calls parents to order:

Imitation and exploration have always been part of the child's learning process and the broadcast media now form part of that experience. It is recognized, of course, that it remains the primary responsibility of parents "to instruct a child in the way that he/she should go." The Children's Code and the Interpretation Guidelines that are issued from time to time are designed to help advertisers avoid making that task more difficult.

The Canadian Children's Food and Beverage Advertising Initiative (Children's Advertising Initiative)

Also managed by Ad Standards, the Canadian Children's Food and Beverage Advertising Initiative (Children's Advertising Initiative⁵²) is a voluntary initiative of several major Canadian food and beverage industry companies (16 in 2018) created to "promote and support healthy dietary choices and healthy lifestyles to children under 12 years of age."

Through the Children's Advertising Initiative, Participants are shifting their advertising and marketing emphasis to foods and beverages that are consistent with the principles of sound nutrition guidance, including those that are lower in total calories, fats, salts and added sugars, and higher in nutrients that are significant to public health⁵³.

The nutrition criteria that "help parents who want to make healthier dietary choices" were redefined in 2015, and standardized to make them common to all the participants "to

⁵² Ad Standards, *Canadian Children's Food and Beverage Advertising Initiative*, <https://adstandards.ca/about/childrens-advertising-initiative/about-the-cai/>

⁵³ *Ibid.*

determine which foods and beverages can be advertised to children under 12⁵⁴.”

These criteria set the calorie limits for eight product categories⁵⁵, and include criteria for reducing the quantity of saturated and trans fats, sodium and sugars, and other criteria for increasing vitamins, minerals and fibre in products marketed to children.

The purpose of the initiative is therefore not only to limit the advertising of products that do not meet these criteria, but even more to encourage companies to only market healthier products, that can then be advertised.

Five key principles governed the development of the new criteria: science-based; appropriate and practical; comprehensive; progressive and transparent. They will provide a road map for Participants to follow as they develop new products and reformulate current products. It is expected that about 35% of products currently being advertised to children by CAI Participants will be affected and will need to be reformulated to continue to be advertised to children⁵⁶.

Hence, in accordance with the five CAI principles, the member companies, who jointly accounted for 77% of food advertising to children in 2017⁵⁷, have committed to:

- *Devote 100 per cent of their television, radio, print and Internet advertising directed primarily to children under 12 years of age to promote products that represent healthy dietary choices, or not direct advertising primarily to children under 12;*
- *Incorporate only products that represent healthy dietary choices or include healthy lifestyle messages in interactive games primarily directed to children under 12 years of age;*
- *Reduce the use of third party licensed characters in advertising directed primarily to children under 12 that does not meet the Children's Advertising Initiative criteria for healthy dietary products or healthy lifestyle messaging;*
- *Not pay for or actively seek to place food and beverage products in program/editorial content of any medium primarily directed to children;*
- *Not advertise food or beverage products in elementary schools - pre-kindergarten through Grade 6⁵⁸.*

Note that CAI participants define an advertisement as being aimed at children under the age of 12 only if aired during a program where the audience consists of more than 35% of children from this age group.

⁵⁴ *Ibid.*

⁵⁵ 1. Milk and alternatives 2. Grain 3. Soups 4. Meat and alternatives 5. Vegetables and fruit 6. Occasional snacks 7. Mixed dishes 8. Meals on the go. Exclusions to the application of the criteria: plain white milk; pure vegetables and fruit; beverages that meet the *Food and Drug Regulations*; chocolate, confectionery and soft drinks (which member companies agree from the outset to not market to children). CANADIAN CHILDREN'S FOOD AND BEVERAGE INITIATIVE, *Uniform Nutrition Criteria White Paper*, 2014, p. 3. <https://adstandards.ca/wp-content/uploads/2018/11/CAIUniformNutritionCriteriaWhitePaper-EN-Nov-2018.pdf>

⁵⁶ *Ibid.*, p. 2.

⁵⁷ *Ibid.*, p. 4.

⁵⁸ Ad Standards, *The Canadian Children's Food and Beverage Advertising Initiative*, *Op. cit.*

Each year, Ad Standards conducts audits among each participant and publishes compliance reports that are available to the public on its website. In 2017, 12% of advertisements aired during children's programs consisted of food or beverage advertising, according to the 2017 Compliance Report⁵⁹.

How can Ad Standards ensure that advertisements comply with CAI? First, through a second review of food or beverage advertising to children. In fact, this advertising must first be approved by the Children's Advertising Section, as previously mentioned. Next, Ad Standards ensures through an additional audit that the products being advertised meet the CAI Participant's commitment. Ad Standards also conducts a random audit of children's advertising on the main children's TV channels. Lastly, all consumer complaints are reviewed in connection with CAI compliance.

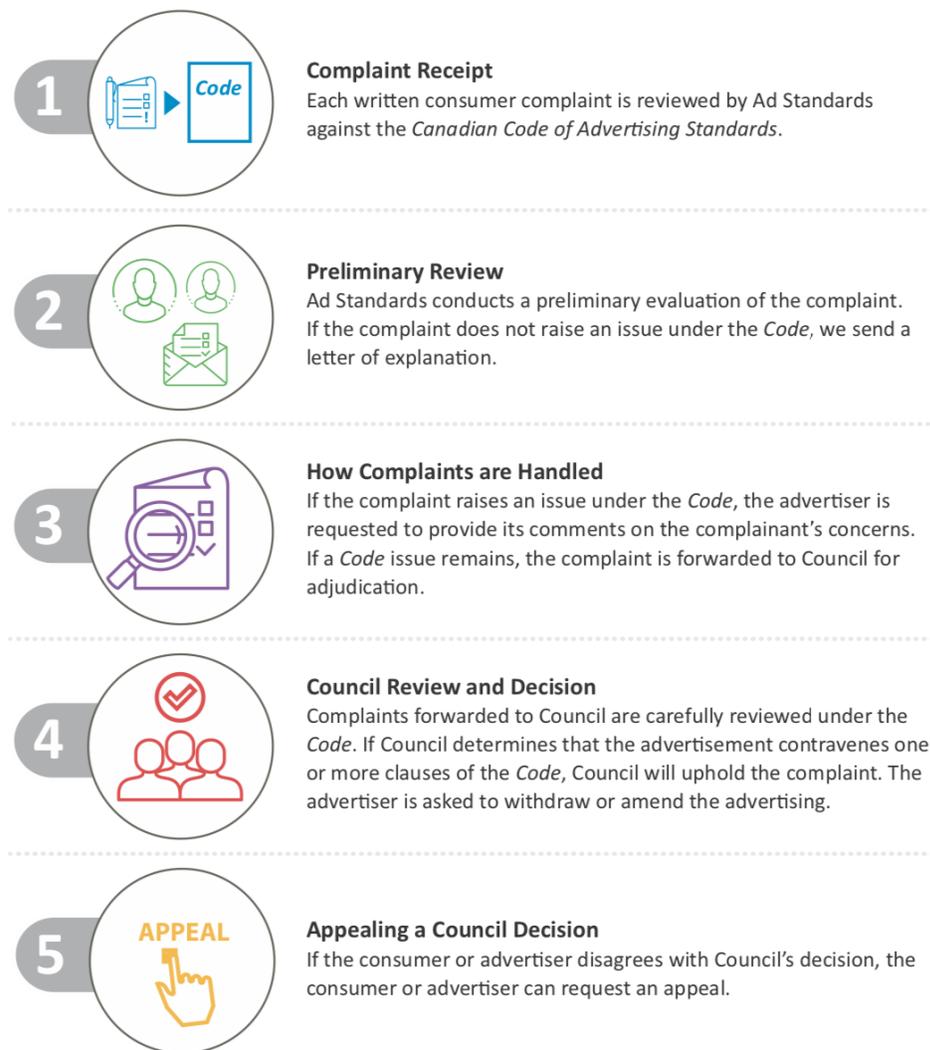
In the event of a consumer complaint

Consumers who are dissatisfied with an advertisement may, through an online form, submit a complaint to Ad Standards through its *Consumer Complaint Procedure*:

⁵⁹ Ad Standards, *The Canadian Children's Food and Beverage Advertising Initiative – 2017 Compliance Report*. <https://adstandards.ca/wp-content/uploads/2018/11/Ad-Standards-CAI-Report-2017-EN.pdf>, p. 4.

The Consumer Complaint Procedure

Established by the Canadian advertising industry over 50 years ago, the *Consumer Complaint Procedure* provides Canadian consumers with a mechanism to submit written complaints about advertising currently running in Canadian media.



Source: Ad Standards – Ad Complaints Report, 2017 Year in Review⁶⁰

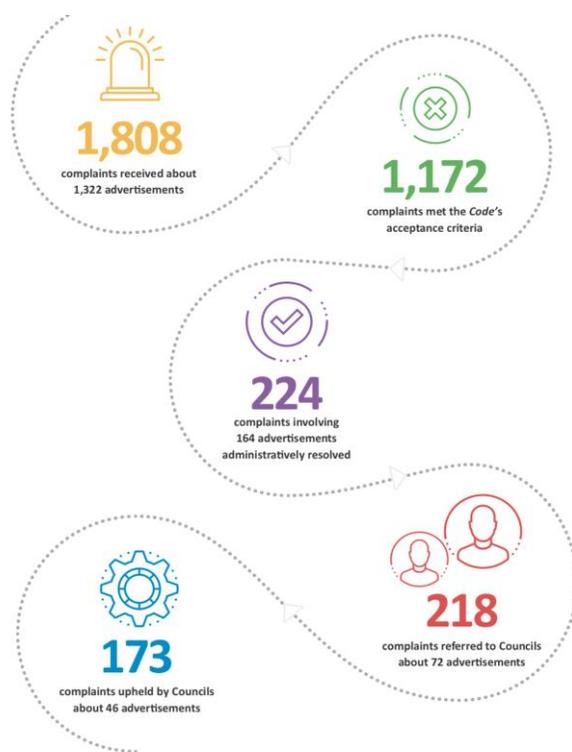
The procedure, which involves several stages, appears somewhat cumbersome and difficult to follow for consumers (preliminary complaint review, complaint handling, and the circumstances regarding a possible review by one of the provincial boards).

Ad Standards receives very few complaints on children's advertising each year (e.g. 1 in 2017, 2 in 2016, 1 in 2015).

⁶⁰ Ad Standards. Ad Complaints Report, 2017 Year in Review, p. 9, <https://adstandards.ca/wp-content/uploads/2018/08/2017adComplaintsReport.pdf>

Moreover, Ad Standards reports that “Of the 117 complaints involving advertising by food manufacturers, retailers and restaurants that were submitted to Ad Standards in 2017, none involved concerns about Participant compliance with CAI commitments⁶¹.”

It is likely that the fact that an Ad Standards Children’s Clearance Committee is in charge of ensuring compliance with the Children’s Code for all children’s advertising plays a role in the situation. In fact, since the Committee must first approve children’s advertising, this also ensures compliance with Children’s Code criteria. If a complaint is still submitted by a consumer who does not agree with the interpretation of the criteria made when producing a particular advertisement, the complaint must first go through the Ad Standards preliminary review, as presented below, before moving to the actual handling stage. In the end, only a very small number of complaints end up in a formal review aimed at accepting or rejecting a complaint:



Source: Ad Standards – Ad Complaints Report, 2017 Year in Review⁶²

Given the context, we find it difficult to conclude that the fact that there have been few complaints means that the self-regulation system in place is working well. As reported by a WHO study:

The significance of the volume and nature of consumer complaints is subject to differing interpretations. Low numbers of complaints about advertising to children is welcomed by industry as implying a high level of consumer satisfaction. On the

⁶¹ *Ibid.* p. 6.

⁶² *Ibid.*, p. 4

other hand, it may indicate low awareness of, or trust in, the child component of legal and self-regulatory codes. That advertisements for “junk foods” are rarely cause for complaint from a health perspective could be a reflection of a lack of concern among consumers worldwide, or it could be a reflection of a complaints mechanism that is focused on the acute effects of deceptive and offensive advertisements rather than on the chronic effects of large numbers of advertisements for similar products. Alternatively, consumers may believe that advertisements have little impact on food choices and, therefore, rather than complain about advertising, they would rather seek advice from medical or nutritional professionals⁶³.

[References omitted]

Summary of advertising regulation in Canada (federal government)

In Canada, the advertising framework is basically centered on the self-regulation of the advertising industry as well as the food and beverage industry, where the government merely sets some very general guidelines. These self-regulation measures make up a patchwork that is difficult to follow for a citizen with an interest in the topic or who worries about the regulations in place in Canada in this matter.

Lastly, note that these self-regulation measures are not applicable to Quebec, as the *Consumer Protection Act* prohibits advertising to children. We will be covering the Quebec regulations in detail in an upcoming section.

The assessment that follows this detailed review shows the varying effectiveness of the self-regulation of advertising to children in Canada, and its limited effect in protecting vulnerable consumers.

Assessment of the regulation of children’s advertising at the federal level (Canada)

The various studies that were consulted clearly show the limits of self-regulation with respect to the marketing of junk food in Canada.

For instance, the studies by Monique Potvin-Kent speak volumes in this respect. In 2011, together with Lisa Dubois and Alissa Wanless, she compared the food and beverage advertisements of two groups of food industry companies in Canada (except for Quebec, where all children’s advertising is banned): the 17 companies that voluntarily submitted to the CAI (see previous section for details) and 35 others who are not participants.

During the study, 32 television stations were recorded for seven days and all the food and beverage advertisements aired during children’s preferred shows were coded. Each coded advertisement was placed into the appropriate group of companies: CAI or non-CAI.

The results are clear: the advertising by CAI-member companies involved products with a higher fat, sugar or sodium content. A significantly higher number of these ads involved products considered unhealthy, compared to non-CAI-member companies. As stated by

⁶³ HAWKES, Corinna. *Marketing Food to Children*, Op. cit., p. 17.

researchers, “With the exception of the four corporations that did not market to children at all, the commitments that have been made in the CAI are not having a significant impact on the food and beverage marketing environment on television which is viewed by 10-12-year-olds⁶⁴.”

CAI criteria were tightened in 2015, as previously mentioned, to prohibit the advertising of products that do not meet certain more specific nutritional criteria, which include limits for saturated fat, calories, sugar and salt. “Participants are committed to improving the landscape of food and beverage advertising in child-directed media through this successful self-regulatory program,” stated Jani Yates, then-director of Ad Standards⁶⁵.

In a study conducted in 2015-16 and published in 2018, researchers Potvin-Kent and Pauzé checked the effectiveness of these new self-regulation measures. They compiled advertisements on food and beverages found online on the 10 most popular websites with children aged 2 to 12 by calculating the quantities of sugar, salt, calories and fat found in the advertised foods. Their conclusion is unequivocal: “The CAI is not limiting unhealthy food and beverage advertising on children’s preferred websites in Canada. Mandatory regulations are needed⁶⁶.”

Note that the same conclusion was reached after a similar study in Australia in 2010: “The continued advertising of unhealthy foods indicates that this self-regulatory code does not adequately protect children⁶⁷.”

These empirical research findings show the pernicious side of self-regulation measures such as the CAI. In fact, when one considers that CAI participants are among the worst producers of foods with salt, fat and sugar in the world⁶⁸, it may seem logical that, even when the nutrient limits set as part of this voluntary initiative are met, their products still contain too much salt, sugar or fat to provide healthy food to consumers. In fact, despite all their efforts, the foods or beverages from these companies, through their very nature, are still less healthy than fruits, vegetables, etc. The CAI should therefore ensure that its participants improve their products (or do not advertise non-compliant products until they are compliant). The fact of the matter is, the tool cannot claim to guarantee healthy food to consumers in accordance with the Canada Food Guide. It is telling that the products advertised by CAI-member companies are generally less nutritionally recommendable than those advertised by non-participants.

⁶⁴ POTVIN KENT, Monique *et al.* “Self-regulation by industry of food marketing is having little impact during children’s preferred television,” *International Journal of Pediatric Obesity*, Volume 6, 2011 - Issue 5-6. <https://www.ncbi.nlm.nih.gov/pubmed/21838571>

⁶⁵ Ad Standards, Ad Standards Releases 2016 Compliance Report on Canadian Children’s Food and Beverage Advertising Initiative. <https://adstandards.ca/wp-content/uploads/2018/04/2016ComplianceReportPressRelease.pdf>

⁶⁶ POTVIN KENT, Monique and E. Pauzé. “The effectiveness of self-regulation in limiting the advertising of unhealthy foods and beverages on children’s preferred websites in Canada,” in *Public Health Nutrition*, Vol. 21, No. 9, June 2018, <https://www.cambridge.org/core/journals/public-health-nutrition/article/effectiveness-of-selfregulation-in-limiting-the-advertising-of-unhealthy-foods-and-beverages-on-childrens-preferred-websites-in-canada/EA4F3981EC0EEB7DC0AC55083C5F6F5D>

⁶⁷ KING, Lesley *et al.* “Industry self regulation of television food advertising: Responsible or responsive?” in *International Journal of Pediatric Obesity*, 2010, Early Online 1-9. https://www.researchgate.net/publication/46392456_Industry_self_regulation_of_television_food_advertising_Responsible_or_responsive

⁶⁸ Ad Standards, *About the Initiative* (CAI) <https://adstandards.ca/about/childrens-advertising-initiative/about-the-cai/>

Moreover, it appears that the wording of the clauses in the Code or Children's Code do not entirely prevent advertisers and manufacturers from exploiting children's vulnerability. Hence, when the Children's Code Background, as previously mentioned, encourages appealing to children's imagination while cautioning against stimulating unreasonable expectations in children, it limits the scope of the warning to a product's performance ("such presentations should not stimulate unreasonable expectations of product or premium performance..."), disregarding the capacity of advertising to create unreasonable expectations regarding the actual possession of the products or its effects.

Whereas appealing to children's imagination to sell them a product solicits or requires the use of still-immature areas of the brain (see chapter 1), drafting clauses requesting that advertisers not directly invite children to buy a product or incite them to ask their parents to do so can only be a suggestion to do so indirectly, since the ultimate aim of advertising is in fact to incite consumption. One would have to be very naïve to believe that children must be explicitly incited to do so by repeatedly asking their parents to purchase the product which advertising was attempting to sell to them. Asking, as Clause 3 does, that means or techniques not be used that will influence the subconscious also raises scepticism, while researchers denounce the effects of subliminal advertising on implicit memory and in fact suggest that the impact of unconscious influence be studied in greater depth⁶⁹. In the era of participative marketing, in particular on social media, this is a major issue for the defence of freedom of choice in children and their parents.

Whereas interests may diverge between commercial aspirations and the protection of vulnerable child consumers, the arbitration as to whether the content of an advertisement is appropriate or not will therefore often be difficult, and the fact that it is done by one of the parties (or by its creation) obviously gives rise to concerns that decisions can be biased. The actual drafting of the provisions on which the arbitration will be based are not at all reassuring – clauses that appear to be generally unaware of child psychology, even of how advertising works and its effects, as we have just shown, and therefore that open the door to the influence techniques that are the nature of advertising.

Recent developments: a move towards strengthening existing regulations

This has been the context for recent work by the Canadian government. Bill S-228, *An Act to amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children)*, introduced in 2016 by Senator Greene Raine, is in line with the Health Minister's mandate to adopt "new restrictions on the commercial marketing of unhealthy food and beverages to children, similar to those now in place in Quebec⁷⁰."

Bill S-228 will be enacted two years after receiving royal assent. Health Canada will then have to draft the associated regulations. To this end, it conducted an extensive public

⁶⁹ INTARTAGLIA, Julien. *Généralisations pub*, *Op. cit.*, p. 94. The author defines implicit memory as a type of memory used to store and then retrieve traces of a past experience which the subject has forgotten. Hence, "mere exposure to a brand where little attention was being paid leaves traces in the implicit memory without any awareness, up to three months after exposure for adults and seven days of exposure for teens" (p. 94).
[Translation]

⁷⁰ TRUDEAU, Justin, *Minister of Health Mandate Letter* (October 4, 2017) <https://pm.gc.ca/en/mandate-letters/minister-health-mandate-letter>

consultation in summer 2017 on “the extent of restrictions necessary to support children and parents to build healthy eating habits by protecting children from powerful marketing forces⁷¹.” The consultation work resulted in a report, and on the stated intention to use the outcome of the consultation to “inform the development of regulations to restrict marketing of unhealthy food and beverages to children⁷².” However, public consultation on the regulations may not take place before the bill is adopted.

The stakeholders consulted during the first consultation phase were asked to provide input on criteria to define “unhealthy food and beverages,” on the scope of “child-directed advertising,” and on the marketing techniques and communication channels to be included or exempt from restrictions⁷³.

This led to the following observations:

- Most parties that took part in the consultation were in agreement for there to be restrictions on food high in salt, sugar and saturated fat and for the advertising of food with over 5% of the recommended daily value of salt, sugar or saturated fat to be prohibited.
- Health Canada submitted for consultation two definitions of advertising for children on television and the Internet. The definitions were supported by those taking part in the consultation.

Proposed Definitions of “Child-Directed” Advertising for TV and Internet⁷⁴

“Child-directed” marketing on **television** includes all unhealthy food and beverage marketing aired, on weekdays from 6:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 9:00 p.m., and on weekends between 6:00 a.m. and 9:00 p.m.

“Child-directed” marketing on the **internet** includes all unhealthy food and beverage marketing on websites, platforms and apps that are popular with children, even when these digital channels are intended also for adults.

- A list of media to regulate or marketing techniques requiring better regulation was produced by Health Canada and submitted for consultation :

⁷¹ HEALTH CANADA. “*Toward Restricting Unhealthy Food and Beverage Marketing to Children*,” *Op. cit.*, p. 5.

⁷² HEALTH CANADA. Consultation Report: Restricting Marketing of Unhealthy Food and Beverages to Children in Canada, Ottawa, Health Canada, December 2017, p. 34. <https://www.canada.ca/content/dam/hc-sc/documents/services/publications/food-nutrition/restricting-marketing-to-kids/consultation-report-eng.pdf>

⁷³ *Ibid.*, p. 4.

⁷⁴ *Ibid.*, Figure 5, p. 22.

Marketing Techniques and Communication Channels Identified by Health Canada⁷⁵

Traditional Marketing Techniques	Digital Marketing Techniques
<ul style="list-style-type: none"> • Packaging and labelling • Use of characters and celebrities (on packages, in ads, at events, etc.) • Sponsorship (of sports teams, events, school supplies) • Sales promotions/premiums (e.g. toy give-away, contests) • Branding (logo, symbol, word or images associated with a food product) • Advertisements (commercials, direct appeal) • Product design • Content (e.g. colours, voices, images) • Product placement 	<ul style="list-style-type: none"> • Advertisements (e.g. banner ads, popup ads) • Advergames (video game that advertises a branded product as part of the game) • Buzz marketing (peer-to-peer) • Word-of-mouth (“liking”, sharing, tweeting) • Marketing “influencers” through • Blogging, vlogging (blogging with video), or social media • Neuromarketing (emotional analysis through sensors) • Behavioural advertising (informed by analytics use of shared personal data or tracking through cookies, device fingerprinting, geo-location)
Communication Channels	
<ul style="list-style-type: none"> • Television • Radio • Print media (e.g. youth magazines, comic books) • Billboards • DVDs • Video games • Digital channels (e.g. websites, social media platforms, game platforms, apps) • Mobile devices (e.g. texting) 	

Consultation participants also identified other marketing techniques or communication channels currently used for advertising to children⁷⁶:

⁷⁵ *Ibid.*, Figure 7, p. 25.

⁷⁶ *Ibid.*, p. 26.

Additional Marketing Techniques and Communication Channels Identified by Contributors⁷⁷

- Recommendations from health professionals/public/parents/friends
- Vending machines
- Taste tests
- Fundraising
- Print media (e.g. youth magazines, comic books)
- Philanthropy/charity (from the food industry)
- Kid flavours
- Brand merchandise
- TV/radio advertisements
- Surveys to get prizes/pop ups promising points (incentive or rewards programs)
- Movies
- Store flyers/displays
- Transportation & vehicle ads (e.g. wraps, signs)
- Sports teams/events
- Clothing/accessories
- Toys/merchandise
- Free samples
- Recreation/community centres
- Product packaging
- School supply/stationery
- Celebrity endorsements
- Mascots

Bill S-228 results from the work of the Standing Senate Committee on Social Affairs, Science and Technology in response to an increase in the obesity rate in Canada. As stated by Senator Seidman:

Rates of obesity have tripled in Canada since 1980. [...] Obesity research has demonstrated there to be many causes, but, as our Senate committee study concluded, the marketing of unhealthy food and beverages to children has a very negative impact. In our committee's study of Bill S-228, we heard testimony from witnesses who, with the exception of the food and advertising industries, unanimously supported the strictest controls [...]. This testimony led the committee to recommend that the federal government implement a full prohibition on the advertising of food and beverages to children, following from Quebec's prohibition of all advertising to children, which has been in place since the 1980s⁷⁸.

The House of Commons proposed a amendment to change the age of the children targeted by the bill from under 17 to under 13 years of age. The bill was also amended to onclude a requirement to submit the sections on the children's age to a review of their effect and on the potential increase of advertising on junk food aimed at children aged 13 to 17.

Adopted by the Senate at first reading in September 2017, the amended bill adopted by the House of Commons in September 2018 returned to the Senate. Six debates on the bill took place in the Senate between September 2018 and June 2019. The Senate did not vote on the bill before it adjourned in June 2019.

⁷⁷ *Ibid.*, Figure 8, p. 26.

⁷⁸ *Debates of the Senate, Official Report*, October 18, 2018, 1st Session, 42nd Parliament, Volume 150, Number 237.

Existing regulations in Quebec

In Quebec, there is different legislation for various forms of advertising. For instance, commercial advertising and public signs and posters are regulated by the Charter of the French Language and the Regulation Respecting the Language of Commerce and Business, Section III; publicity contests by the Act Respecting Lotteries, Publicity Contests and Amusement Machines, and advertising for long-term vehicle leasing by the Consumer Protection Act; etc.

The Consumer Protection Act also regulates advertising to children. However, there is nothing in the Act that specifically pertains to junk food, other than it being automatically prohibited by current legislation, regarding any advertising to children under the age of 13.

Regulation of advertising to children

In late 1978, Quebec made a choice that is unique in North America, namely of including provisions in sections 248 and 249 of the new *Consumer Protection Act* (CPA⁷⁹) that would prohibit advertising to children under the age of 13, provisions that are still unchanged to this day.

Section 248 states the formal prohibition, while indicating that the regulation will contain exceptions:

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

Section 252 states that “to advertise” means “to prepare, utilize, distribute, publish or broadcast an advertisement, or to cause it to be distributed, published or broadcast.” The term “advertisement” is defined in the first section as “a message designed to promote goods, services or an organization in Québec.” Since prohibited advertising is “commercial” advertising, non-commercial advertising, such as for educational purposes, will always be allowed.

The next section stipulates what determines whether an advertisement is prohibited because it is “directed at persons under thirteen years of age”:

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of:

- a) the nature and intended purpose of the goods advertised;*
- b) the manner of presenting such advertisement;*
- c) the time and place it is shown.*

The fact that such advertisement may be contained in printed matter intended for persons thirteen years of age and over or intended both for persons under thirteen years of age and for persons thirteen years of age and over, or that it may be broadcast during air time intended for persons thirteen years of age and over or

⁷⁹ *Consumer Protection Act*, CQLR, c. P-40.1.

intended both for persons under thirteen years of age and for persons thirteen years of age and over does not create a presumption that it is not directed at persons under thirteen years of age.

As stated in 1978 by Lise Payette, then-Minister for Consumer Affairs, Cooperatives and Financial Institutions, the effect sought by the ban was basically to ensure that advertising was directed at the proper audience, namely parents, who are the real consumers since they are responsible for making purchases. On November 15, 1978, in response to the presentation of a representative from the toy company Mattel, she explained:

Once again, I believe you are off the mark on the issue and you give the impression [...] that our intention is to get rid of all advertising related to toys. I believe that this is a fundamental mistake, in that we simply want advertising to be directed to the right audience, meaning those who choose the product being purchased, in this case, the parents⁸⁰. [Translation]

For the government at the time, it was a question of protecting target consumers, children, whose critical faculties are still not developed enough to put advertisements into perspective. The solution that was adopted was to make sure that children are not subject to companies' persuasive techniques. Consumers thus maintain their freedom of choice, and particularly vulnerable consumers, namely children, are protected. Furthermore, the advertising of children's products continues to be allowed, provided it is directed at adults.

The legislative framework thus covers all commercial advertising directed at children, on all possible platforms (e.g. print media, television, radio, Internet). This wholesale ban therefore includes junk food advertising. In fact, it was already one of the concerns of legislators at the time: to ensure the health of children by not exposing them to junk food advertising.

There are three exceptions in the regulations under which commercial advertising to children is allowed:

- 1- If the advertisement is in a children's magazine
- 2- If its purpose is to advertise a program or show directed at children
- 3- If it is shown on a display case, shelf, container, packaging or label.

A very comprehensive application guide developed by the Office de protection du consommateur (OPC) serves to specify the criteria "that need to be considered in determining whether an advertisement is directed at children, and if it is prohibited. It also presents the exemptions under the Regulation respecting the application of the Consumer Protection Act⁸¹." [Translation]

⁸⁰ ASSEMBLÉE NATIONALE DU QUÉBEC, *Journal des débats, troisième session, 31e législature*, Commission permanente des consommateurs, des coopératives et des institutions financières, November 15, 1978, p. B-7734. <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cccif-avant-1984-31-3/journal-debats/CCCIF-781115.html>

⁸¹ OFFICE DE PROTECTION DU CONSOMMATEUR (OPC). *Publicité destinée aux enfants de moins de 13 ans – Guide d'application des articles 248 et 249 Loi sur la protection du consommateur*, p. 1. <https://www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/bien-service/index-sujet/guide-application.pdf>

In the event of an infringement, the OPC may: 1) send a notice to the offender reiterating sections 248 and 249; 2) negotiate a voluntary agreement aimed at modifying faulty commercial practices; or 3) ensure that a statement of offence is issued that may result in criminal proceedings.

Under sections 277, 278, 282 and 283 of the CPA, any infringement is subject to a penalty of \$600 to \$15,000 for an individual or \$2,000 to \$100,000 for a legal entity.

Assessment of the legislative framework related to advertising to children in Quebec

In 2018, we completed a study that reviewed the effectiveness and appropriateness of Quebec legislation on advertising to children.

Despite some weaknesses mentioned in that report, notably the exclusion of packaging and in-store displays⁸², the study's findings were clear: the arguments and social determinations that led Quebec to strictly regulate advertising to children in the 1970s are still relevant today and fully justify prohibiting advertising to children and maintaining the ban.

In fact, the four decades that have passed since the legislative provisions were adopted have reinforced the importance and need for this legislative measure in Quebec, namely as a result of the scientific studies that continue to show the effect of advertising on the brain and the particular vulnerability of children, whose faculties are still developing.

The approach adopted in Quebec is very different from the one chosen by the federal government: whereas Quebec chose to put the focus on children in its legislative framework, the Canadian government instead opted to balance the interests of children with those of the industry, in a tango in which it appears to allow industry to take the lead. The effects of the two approaches are obviously different as well.

Recent scientific literature confirms the positive effects of regulating advertising to children in Quebec

Dr. Monique Potvin-Kent, Associate Professor in the School of Epidemiology and Public Health at the University of Ottawa, conducted a study in 2010 on the effects of the Quebec legislation. Dr. Potvin-Kent compared the effects of the current legislation in Quebec and Ontario on the number and type of advertisements watched on television by children from the two provinces. The study findings show that Quebec children watch much less child-directed advertising than Ontario children, as well as very different advertising:

The advertising ban in Quebec is, however, having an impact on the content of advertisements during French Quebec's children's preferred television viewing. Fun and the appearance of media characters or celebrities were used significantly less frequently as persuasive appeals and there were significantly fewer

⁸² Weaknesses that many participants in the federal consultation noted as well. See, for example: CANADA, CHAMBRE DES COMMUNES, Audiences du Comité permanent de la Santé, 18 avril 2018 et 23 avril 2018. <https://www.ourcommons.ca/DocumentViewer/en/42-1/HESA/meeting-100/evidence> and <https://www.ourcommons.ca/DocumentViewer/en/42-1/HESA/meeting-101/evidence>

food/beverage contests, and sponsorship announcements in the French Quebec viewing (and none related to food/beverages) which is a significant difference from the viewing of the two English groups⁸³.

Incidentally, Quebec has the lowest obesity rate in the country among children aged 6 to 11, and the highest consumption of fruits and vegetables⁸⁴. Researchers see a corresponding link with the ban on child-directed advertising in Quebec, which of course includes junk food advertising⁸⁵.

Summary

This section covered in detail the legislative framework in place at the federal level and in Quebec, two fairly different regulatory models that are summarized in the tables below.

Table 1: Summary of the assessment of the regulation of advertising to children in Canada and Quebec

Adopted measures	
Canada	<ul style="list-style-type: none"> - Self-regulation of advertising industry (sections 12 and 13 of the Canadian Code of Advertising Standards + the Broadcast Code for Advertising to Children + section 2.2 of the guidelines) - Self-regulation of food industry by the Canadian Children’s Food and Beverage Advertising Initiative
Quebec	<ul style="list-style-type: none"> - Ban on all advertising to children on all platforms (sections 248 and 249 of the Consumer Protection Act)
Scope of measures	
Canada	<ul style="list-style-type: none"> - All advertising to children is covered by existing self-regulation mechanisms - A supervisory committee approves each advertisement to children (Children’s Code)
Quebec	<ul style="list-style-type: none"> - No advertising to children under the age of 13 allowed in Quebec, regardless of the platform.
Objectives	

⁸³ POTVIN-KENT, Monique and Lise Dubois. “Food marketing on children’s television,” *Op. cit.*

⁸⁴ RADIO-CANADA, *Les jeunes trop exposés aux publicités sur la malbouffe*, February 1, 2017, <http://ici.radio-canada.ca/nouvelle/1014232/jeunes-exposition-publicites-malbouffe-fondation-maladies-coeur-avc>

⁸⁵ DHAR, Tirtha and Kathy BAYLIS, “Fast Food Consumption and the Ban on Advertising Targeting Children: The Quebec Experience,” *Journal of Marketing Research*, April 2011, p. 25-27 https://www.ama.org/Documents/fast_food_consumption.pdf

Canada	<ul style="list-style-type: none"> - Foster community confidence in advertising (Ad Standards) - Ensure the integrity and viability of advertising (Ad Standards) - Serve the interests of the advertising industry and the public (Ad Standards) - Take into account the specific characteristics of a young audience (Children's Code)
Quebec	<ul style="list-style-type: none"> - Protect vulnerable consumers: children - Improve their health by not exposing them to junk food advertising⁸⁶
Recourse	
Canada	<p>Submit complaint through the Ad Standards Consumer Complaint Procedure</p> <ul style="list-style-type: none"> - Online complaint form - Review by a voluntary independent organization: standards board - Decision summaries are public, released on the Internet
Quebec	<ul style="list-style-type: none"> - Complaint submitted to the Office de la protection du consommateur - OPC monitoring and action
Expected results	
Canada	<ul style="list-style-type: none"> - Regulate advertising directed at children in Canadian media, based on criteria set by the Code, Children's Code and Ad Standards Guidelines
Quebec	<ul style="list-style-type: none"> - No advertising to children in Quebec, regardless of media
Actual results	
Canada	<ul style="list-style-type: none"> - Very few complaints to Ad Standards - A lot of advertising of unhealthy foods, in all media - Children aged 13 to 17 have become the preferred target audience for advertisers
Quebec	<ul style="list-style-type: none"> - No advertising to children under the age of 13 in children's television shows - 30% of advertising still targets children, in particular television shows for general audiences - Advertising on the Internet and video games - Children aged 13 to 17 have become the preferred target audience for advertisers

⁸⁶ Statement by Minister Lise Payette, during the parliamentary committee on PL 72, concerning the effects sought by the application of sections 233 and 234, now sections 248 and 249 of the CPA.

Summary Table 2: Legislative framework of junk food advertising in Canada and Quebec

Adopted measures	
Canada	<ul style="list-style-type: none">- Self-regulation of advertising industry through the Broadcast Code for Advertising to Children- Self-regulation of a few members of the Canadian food industry through the Canadian Children's Food and Beverage Advertising Initiative
Quebec	<ul style="list-style-type: none">- Consumer Protection Act prohibits any advertising to children under the age of 13, but exempts by regulations advertising in magazine or insert directed at children; advertisements of shows directed at children; packaging, labelling, store windows, displays, etc.- Therefore, junk food advertising is effectively prohibited for children under the age of 13.

In the next chapter, we will be looking at the situation regarding advertising to children elsewhere in the world.

3. Regulation of Junk Food Advertising Elsewhere in the World: Developments in Four Countries

Types of regulation for advertising to children

According to the World Health Organization (WHO), there are three main types of regulation of advertising directed at children:

- 1- Statutory regulation: based on government laws and regulations and mandatory. The laws and regulations pertain to the form, type and content of the advertising as well as the way it is presented;
- 2- Guidelines or government standards: has the same objectives as statutory regulation, but usually does not have the same binding force;
- 3- Self-regulation: managed independently and voluntarily by the industry involved. Usually consists of a code of conduct along with processes involved in its adoption, revision and application. Self-regulation may be required by legislation, but it can also operate completely independently⁸⁷.

Overview of regulation elsewhere in the world

More than 73 countries currently regulate advertising to children⁸⁸, whether through statutory regulation, guidelines, self-regulation, or a combination of the different types of regulation. However, only a few jurisdictions outright ban advertising to children, regardless of the media and type of advertising (e.g. food, toys): Quebec, Norway and Sweden.

The other jurisdictions have instead chosen to only regulate the advertising of junk food or of certain products in specific locations such as schools or public transit, or limit regulation to certain advertising media.

Of the 73 countries studied by WHO in 2004, it appears that 85% of those that adopted some kind of regulation of advertising to children did so to regulate television advertising. It would further appear that in several countries, statutory regulation and self-regulation coexist in various forms: 63% had set up restrictive regulation and 70% self-regulation⁸⁹.

Although there are weighty arguments against junk food advertising, reiterated by several lobby groups and international bodies such as WHO, the literature review shows that countries that adopt some type of regulation or other also largely invoke, as justification, the fight against consumerism and sexist stereotypes, the need to protect children during their formative years, and parents' freedom of choice⁹⁰, based on the recent scientific literature.

⁸⁷ HAWKES, Corinna. *Marketing Food to Children*, *Op. cit.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p. 14.

⁹⁰ LE FIGARO, L'interdiction de la publicité dans les programmes pour enfants votée au Sénat, December 8, 2016, <http://www.lefigaro.fr/actualite-france/2016/12/07/01016-20161207ARTFIG00009-l-interdiction-de-la-publicite-dans-les-programmes-pour-enfants-revient-au-senat.php> ou

LE MONDE, La suppression de la publicité pour enfants fait débat entre socialistes et écologistes, January

A French senator had the following to say on the issue:

Why is it so important to restrict advertising in children's programs? The many hearings I conducted in the past few weeks are clear about the harmful effects of advertising on young children. Dr. H  l  ne Thibault, a pediatrician and member of the Institut de sant   publique, d'  pid  miologie et de d  veloppement finds a correlation between the time spent watching television and obesity, and the effect is greater in children who have fallen behind in school and on those whose parents are unable to help them academically. Dr. Fran  ois-Marie Caron explains that children are often left alone to watch children's shows all the more so as vulnerable families have tremendous trust in public service. Advertising is thus legitimized, including in the eyes of the parents, who overvalue industrialized products over unprocessed fruits and vegetables. Psychoanalyst Serge Tisseron notes that children under the age of eight do not have higher-level awareness and do not differentiate between a character in a cartoon and the same character used immediately afterwards to sell a chocolate bar or cereals full of sugar and fat. And young children do not read health warnings... The arguments in favour of banning advertising in children's shows are therefore very compelling⁹¹. [Translation]

In fact, recent developments in neuroscience confirm the influence of brands and advertising on the psychological and social development of children, and even international arguments against junk food advertising are largely based on the effect of persuasive techniques on a child's not yet fully formed, and therefore particularly vulnerable, brain. Therefore, it may be surprising to see that such a large number of jurisdictions still only ban junk food advertising, as the arguments appear to logically apply to all forms of advertising.

However, over the last 15 years, several countries have adopted broader and more restrictive forms of regulation and, as in Quebec in the 1970s, social acceptability is also very high: for instance, in December 2016 in France, 87% of those surveyed said they were in favour of abolishing commercial advertising in children's programs and on public television channels⁹². However, most countries that prohibit all types of advertising to children, rather than just junk food advertising, only apply this prohibition to television.

The regulations of different countries that implement measures, whether restrictive or not, target children between the ages of 12 (Finland, Norway, Sweden, Netherlands) and 16 (United Kingdom)⁹³.

SOME COUNTRIES THAT HAVE CHOSEN BINDING LEGISLATION

Based on the results of our recent research on the topic, we drew up the following table that outlines the binding legislation in force in some countries on advertising to children,

15, 2016, http://www.lemonde.fr/actualite-medias/article/2016/01/15/la-suppression-de-la-publicite-pour-enfants-fait-debat-entre-socialistes-et-ecologistes_4848325_3236.html

⁹¹ NOS S  NATEURS, *Allocution de la s  natrice Corinne Bouchoux, Commission de la culture, de la communication et de l'  ducation, r  union du 14 octobre 2015, 2  me r  union*, Observatoire citoyen de l'activit   parlementaire https://www.nossenateurs.fr/seance/13448#table_52512

⁹² LE FIGARO. L'interdiction de la publicit   dans les programmes pour enfants, *Op. cit.*

⁹³ HAWKES, Corinna. *Marketing Food to Children*, *Op. cit.*, p. 4.

regardless of the type:

**Table 3 —
Examples of existing binding legislation elsewhere in the world⁹⁴**

	Media	Type of advertising	Details
Sweden (since 1991)	All	All	No advertising to children aged 12 and under, including advertising mail directed at children under 16.
Norway (since 1992)	Mainly television	All	No television advertising to children under 16, including any advertisements that could be considered as exploiting the vulnerability of children.
United Kingdom (since 2006)	Television	Junk food	No advertising of products high in fat, sugar and salt during children's programs to children aged 4 to 15. Also launched commercial-free children's television channels.
Spain (since 2011)	Television (public channels) Schools and day care centres	All Junk food	No advertising to children on public television children's programs. In accordance with nutrition and food security legislation, no food advertising permitted at schools and day care centres.
Mexico (since 2014)	Television, movie theatres	All	No advertising to children on television as well as in movie theatres during the afternoon and on weekends.
Taiwan (since 2016)	Television	Junk food	No junk food advertising to children on television.
Australia (since 2016)	Television	All	No television advertising during programs intended for preschool children.
France (since 2018)	Television (public channel only)	All	No advertising to children on the public channel France Télévisions.

⁹⁴ Sources: HAWKES, Corinna. *Marketing Food to Children*, *Op. cit.*, OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL. *Les communications commerciales dans la révision de la directive SMAV*, November 23, 2017. <https://www.obs.coe.int/fr/web/observatoire/-/commercial-communications-in-the-avmsd-revision>. OTTAWA PUBLIC HEALTH. *Qu'est-ce que la publicité destinée aux enfants et aux jeunes?*, May 31, 2017, <https://blogs.ottawa.ca/santeottawahealth/fr/2017/05/30/quest-ce-que-le-publicite-destinee-aux-enfants-et-aux-jeunes/>. LE FIGARO, *L'interdiction de la publicité dans les programmes pour enfants*, *Op. cit.*; OPTION CONSOMMATEURS (OC), *La publicité destinée aux enfants: identifier la meilleure protection possible*, 2008. <https://option-consommateurs.org/wp-content/uploads/2017/08/pratiques-commerciales-publicite-enfants-avril-2008.pdf>; UNION DES CONSOMMATEURS, *Marketing Junk Food*, *Op. cit.* WORLD CANCER RESEARCH FUND INTERNATIONAL, *Restrict Food Advertising and Other Forms of Commercial Promotion*, <https://www.wcrf.org/sites/default/files/Restrict-advertising.pdf>

Italy	Television	All	No commercials during cartoons.
Belgium	Television	All	No commercials before and after youth programs.
Luxembourg	Television	All	No commercials before and after youth programs.

More specific regulation of junk food advertising in four countries

As previously done for Canada and Quebec, we will be drawing up a more detailed profile of the regulation of advertising to children in certain countries, i.e. Sweden, Norway, France and the United States. We chose these countries as a follow-up to the study conducted by Option consommateurs in 2008⁹⁵ and to identify any major trends that emerged between 2008 and 2019. This will enable us to note any developments over the last few years and determine current worldwide trends in connection with the regulation of junk food advertising.

Five aspects will be considered in our comparative and progressive assessment of these four countries: 1) type of regulation in force; 2) scope of existing measures; 3) target objectives; 4) existing recourses; and 5) results observed. In an effort to quickly get to the heart of the matter, the information was summarized in tables and additional information can be found after the tables in each section, as the case may be.

1) TYPE OF REGULATION

	Advertising to children	Junk food advertising
Sweden	<p>Legislation prohibiting all television advertising to children under 12.</p> <p>No advertising mail for children aged 16 and under.</p>	Effectively prohibited through general legislative provisions.
Norway	<p>Legislation on advertising to children, regardless of media.</p> <p>Concretely, for television: no commercials before 9:00 p.m. showing characters appearing in children's programs.</p> <p>No commercials 10 minutes before, during and after a children's program.</p>	Effectively prohibited through general legislative provisions

⁹⁵ OC, *La publicité destinée aux enfants: identifier la meilleure protection possible*, 2008, Op. cit.

<p>France</p>	<p>No advertising to children on the public television channel.</p> <p>Reinforcement of self-regulation monitoring for private channels.</p> <p>Other media: voluntary regulation through industry codes of conduct; example: recommendations from the Autorité de régulation professionnelle de la publicité (ARPP).</p>	<p>2008: Adoption of the <i>Charte visant à promouvoir une alimentation et une activité physique favorable à la santé dans les programmes et publicités diffusées à la télévision</i> – voluntary commitment by the food industry (and the media)</p> <p>Good practice guidance from the Association nationale des industries alimentaires (2002)</p> <p>Since 2004: mandatory health information in junk food advertising</p> <p>Recommendations on the depiction of eating behaviours from the Autorité de régulation professionnelle de la publicité (ARPP).</p>
<p>United States</p>	<p>A few legislative provisions by the Federal Communications Commission (FCC): limits in the duration of television commercials directed at children; restrictions on the promotion of children’s websites.</p> <p>Industry self-regulation: Guidelines of the Children’s Advertising Review Unit for children under 12.</p> <p>Bill introduced in Congress in March 2019.</p>	<p>Since 2007: Council of Better Business Bureaus’ Children’s Food and Beverage Advertising Initiative: Voluntary commitments from 18 food industry giants, based on the Canadian CAI model.</p>

Although they chose different approaches, the common point between these four countries is the desire to protect children aged 12 and under against the influence of advertising (13 years in the United States if the March 2019 bill is adopted – see below).

In these four countries, the debate on the preferred type of regulation is ongoing, and all types of groups are actively lobbying to tighten or relax it.

In France, for instance, there have been clear attempts to tighten the regulation of advertising to children given the rapid increase in the country’s childhood obesity rate. In 2009, a charter signed by the advertising and food industries under the sponsorship of the Culture and Health ministers required a commitment to “raise the moral standards of their advertising practices targeting children⁹⁶” [*Translation*]. However, in 2010, the organization

⁹⁶ QUE CHOISIR, *Réalité des engagements de l’agroalimentaire sur l’obésité infantile*
<https://www.quechoisir.org/action-ufc-que-choisir-realite-des-engagements-de-l-agro-alimentaire-sur-l->

UFC-Que choisir noted that the initiative had failed: fatty and sugary products are present more than ever on French television⁹⁷. A new charter was signed by more signatories in November 2013, involving more television channels, viewing times and types of broadcasting covered⁹⁸.

The matter was making its way through legislative channels, and in 2016, Senator André Gattolin succeeded in getting the bill through aimed at banning advertising on children's programs on public television. An amendment to the proposal was also adopted: advertising to children would be regulated, not banned, on France's private channels. The law was adopted in December 2016 and would come into force in 2018⁹⁹.

In the U.S., the effects on health of junk food advertising are also fuelling the debate on the regulation of advertising to children. In March 2019, U.S. senators introduced a bill, supported by lobby group Campaign for a Commercial-Free Childhood, aimed at banning any marketing directed at children aged 13 and under on the Internet¹⁰⁰, which would significantly increase the scope of the measures in place in the U.S. Were it to be adopted, the legislation would increase the effectiveness of the protection of children, large numbers of whom use the Internet. The American Psychological Association (APA) is also asking for a major tightening of the regulation of advertising to children in the U.S.:

The strength of the research documenting young children's limited ability to recognize and defend against television advertising has improved substantially since the 1970s, when both the FCC and the FTC seriously considered, although ultimately eschewed, broad-based restrictions on advertising targeting audiences of young children. We believe that the accumulation of evidence on this topic is now compelling enough to warrant regulatory action by the government to protect the interests of children, and therefore offer a recommendation that restrictions be placed on advertising to children too young to recognize advertising's persuasive intent¹⁰¹.

The debate is also ongoing in the various American states, which have adopted various types of legislation on the issue over the years¹⁰².

In Norway, the regulation is applied very strictly: there is an infringement to the regulation if there is a slight chance that a child will not understand the difference between an advertisement that uses special effects and reality. Furthermore, in 2019, Norway's Consumer Ombudsman chose as a priority to combat unrealistic body images found in advertising to children and youth on social media, as well as the analysis of new marketing

[obesite-infantile-la-verite-sort-du-cartable-des-enfants-n14093/](#)

⁹⁷ *Ibid.*

⁹⁸ CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL, La charte alimentaire 2013

<https://www.csa.fr/Proteger/Actions-du-CSA-pour-la-sante-publique/La-charte-alimentaire>

⁹⁹ GATOLIN, André, [AFP] *La loi supprimant la pub des programmes pour enfants de FranceTV publiée au JO*, December 22, 2016. <http://www.andregattolin.net/2016/12/22/afp-la-loi-supprimant-la-pub-des-programmes-pour-enfants-de-francetv-publiee-au-jo/>

¹⁰⁰ CAMPAIGN FOR A COMMERCIAL-FREE CHILDHOOD. *It's happening: a new bill will ban targeted marketing to kids online*, March 22, 2019, <https://commercialfreechildhood.org/blog/its-happening-new-bill-will-ban-targeted-marketing-kids-online>

¹⁰¹ AMERICAN PSYCHOLOGICAL ASSOCIATION (APA). *Report of the APA Task Force on Advertising and Children*, February 2004, <https://www.apa.org/pubs/info/reports/advertising-children>

¹⁰² HAWKES, Corinna, *Marketing Food to Children: Changes in the Global Regulatory Environment, 2004-2006*, OMS, 2007, p. 72, https://apps.who.int/iris/bitstream/handle/10665/43693/9789240682122_eng.pdf

techniques on social media¹⁰³. A major restructuring in January 2019 provided the Ombudsman with more means in this respect, in particular coercive ones.

Sweden appears concerned about the circumvention of its legislation by advertisers running commercials in Sweden from abroad. The country is campaigning for a pan-European regulation to be implemented to counter this situation¹⁰⁴.

2) SCOPE OF MEASURES TO REGULATE JUNK FOOD ADVERTISING

	Scope of measures
Sweden	Since 1991, all media are covered, for all types of advertising.
Norway	Since 1992, all types of advertising are covered, especially on television, but also any advertisements that may be considered as exploiting the vulnerability of children.
France	The regulatory framework is limited to advertising to children on television. Private channels and all other media: self-regulation by advertisers and the food industry.
United States	The FCC regulates television commercials to some extent. Self-regulation for all other media.

3) TARGET OBJECTIVES

	Objectives
Sweden	Avoid exploiting the vulnerability and gullibility of children. ¹⁰⁵ “Advertising during a TV broadcast may not have as its objective capturing the attention of children under 12 years of age” (Chapter 7, Section 4, Radio and Television Act).
Norway	Make sure that an advertisement can be clearly distinguished by children, and not exploit their gullibility.
France	Enable self-regulation by the advertising industry, with relative administrative supervision. Combat child obesity. ¹⁰⁶

¹⁰³ <https://www.forbrukertilsynet.no/english/agenda-2019-eng>

¹⁰⁴ *Ibid.*, p. 24. https://apps.who.int/iris/bitstream/handle/10665/43693/9789240682122_eng.pdf?sequence=1

¹⁰⁵ PLOGELL, Michael *et al.* “Advertising to children in Sweden,” in *Young Consumers*, Vol. 5, No. 2, 2004 <https://www.emeraldinsight.com/doi/abs/10.1108/17473610410814184>

¹⁰⁶ SÉNAT, *Loi relative à la suppression de la publicité commerciale dans les programmes jeunesse de la télévision publique*, Loi n° 2016-1771 du 20 décembre 2016. <http://www.senat.fr/dossier-legislatif/ppl14-656.html>

United States	<p>Make industry accountable.</p> <p>If the March 2019 bill is adopted: stricter regulation of the use of the personal information of children aged 13 and under.</p>
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4) RECOURSE IN THE EVENT OF NON-COMPLIANCE WITH EXISTING MEASURES

	Recourse
Sweden	Submit complaint to Consumer Ombudsman
Norway	Submit complaint to Consumer Ombudsman
France	<p>CSA subsequently monitors the application of advertising regulations.</p> <p>ARPP must “take action in favour of honest, truthful and healthy advertising in the interests of the advertising industry, consumers, and the public” [<i>Translation</i>]. A single complaint to the complaints department is enough to ask the advertiser to change its advertisement if it is in breach of the code of ethics.</p>
United States	<p>Little recourse, even under state consumer protection laws.</p> <p>In 1976, the Supreme Court recognized the right to freedom of commercial speech.</p>

Norway’s Consumer Ombudsman has been in existence since 1973 and ensures compliance with several consumer protection laws, including the Norwegian Marketing Control Act¹⁰⁷. Appointed by the government but acting independently from elected representatives, the Ombudsman initiates cases on its own or handles consumer or merchant complaints. Its decisions can be challenged before a judicial body (Norwegian Market Council), and it has the power to impose financial penalties, which has been reinforced since January 2018:

*[...] we have been empowered to take direct enforcement action and impose financial penalties against those who break the law. These changes were made with the goal of achieving more effective enforcement, through the imposition of stronger measures to combat illegal marketing and unreasonable contractual terms*¹⁰⁸.

France: In theory, a single complaint to the complaint department of the BVP (Bureau de vérification de la publicité) is sufficient for a notice to be sent to the advertiser to have it modify an advertisement that is in breach of the BVP code of ethics. In practice, in a 2007 study, the consumer rights advocacy organization *UFC-Que choisir* reported that BVP lets through 89% of junk food advertising to children, “giving free rein to the nutritional

¹⁰⁷ FORBRUKERTILSYNET, *About The Consumer Authority* <https://www.forbrukertilsynet.no/the-consumer-ombudsman>

¹⁰⁸ *Idem*, Agenda 2019 (eng) <https://www.forbrukertilsynet.no/english/agenda-2019-eng>

harassment directed at children”¹⁰⁹ [Translation].

In the United States, two complainants used New York State’s consumer protection legislation to allege that McDonald’s had used misleading practices in the marketing of its products, which made them obese (Pelman v. McDonald’s, 2002). They lost their case in 2003¹¹⁰. Interestingly enough, legislators proposed two similar bills in 2004 and 2005: the Personal Responsibility in Food Consumption Act and the Commonsense Consumption Act. Their aim was to protect fast-food chains from any suits based on damage sustained following the consumption of their products. “This bill is about self-responsibility. If you eat too much, you get fat. It is your fault. Don’t try to blame somebody else,” stated a member of Congress¹¹¹. These bills were not adopted, but over 24 similar bills were adopted in as many states in the years that followed. This is evidence of what we reported in the first chapter on the political weight of the food industry and their successful strategy of diverting attention from the harmful effects of their products and making individuals solely accountable for their choices.

Similarly, the U.S. Supreme Court has long (since 1976) interpreted the First Amendment as also protecting the freedom of commercial speech. Hence, “the Supreme Court’s resolution of *Lorillard v. Reilly* reveals the difficulty faced by local officials trying to restrict advertising to children. In this case, Massachusetts attempted to restrict advertising of tobacco products within 1000 feet of schools and playgrounds. The Court found this violated the companies’ free speech rights, explaining that ‘the governmental interest in protecting children from harmful materials... does not justify an unnecessarily broad suppression of speech addressed to adults’¹¹².”

5) RESULTS OBSERVED

	Results observed
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¹⁰⁹ UFC-QUE CHOISIR. *Obésité et publicités télévisées – Quelles mesures de protection pour les enfants?* 2007, <https://www.quechoisir.org/dossier-de-presse-obesite-et-publicites-televisees-queelles-mesures-de-protection-pour-les-enfants-n13977/>

¹¹⁰ HAWKES, Corinna. *Marketing Food to Children: the Global Regulatory Environment*, World Health Organization, 2004, *Op. cit.*, p. 8.

¹¹¹ HARRIS JL. *et al.* “A crisis in the marketplace,” *Op. cit.*, p. 218.

¹¹² HARRIS JL. *et al.* “A crisis in the marketplace,” *Op. cit.*, p. 219.

<p>Sweden</p>	<p>Effective as a result of the clarity of the three criteria used to determine whether an advertisement is intended for children: 1) Type of product; 2) Content of advertisement; and 3) Broadcasting context.</p> <p>However: Circumvention by advertisers by broadcasting from abroad.</p> <p>The legislation was contested before Europe’s highest authorities – TV3 obtained the right to broadcast commercials in Swedish from the UK (1998).¹¹³</p>
<p>Norway</p>	<p>Good results subsequent to the stringent enforcement by the Ombudsman of Article 1 of the Marketing Control Act, which prohibits any unfair practices toward child consumers.¹¹⁴</p> <p>However: Circumvention by advertisers by broadcasting from abroad.</p> <p>The legislation was circumvented by advertisers, who were based outside the country to broadcast their advertisements to children.</p>
<p>France</p>	<p>Mitigated: UFC-Que choisir concluded that self-regulation was a failure¹¹⁵ and noted that food advertisers adjusted the broadcasting of their commercials to times when the most children were watching TV.¹¹⁶</p> <p>Too many stakeholders – three industry watchdogs.</p> <p>Following 2016 legislation, no report from the CSA to provide an update on advertising to children on private channels.</p>
<p>United States</p>	<p>“The advertising industry has recognized the sensitivity of these issues in its own self-regulatory advertising guidelines, but this code is exceedingly vague, compliance is completely voluntary, and enforcement is not actively pursued¹¹⁷.”</p> <p>For example: between 2008 and 2010, a 5% increase in advertising expenditure for sugary drinks and energy drinks, despite the industry’s commitments.¹¹⁸</p>

In France, the organization UFC-Que Choisir was categorical in 2010 on the effects of self-regulation:

¹¹³ IRIS MERLIN, *Suède – interdiction des publicités destinées aux enfants, à l’exception de celles diffusées par des chaînes étrangères*, IRIS 1999-2:6/7. <http://merlin.obs.coe.int/iris/1999/2/article7.fr.html>

¹¹⁴ OPTION CONSOMMATEURS, *La publicité destinée aux enfants*, Op. cit., p. 72.

¹¹⁵ UFC-QUE CHOISIR, *Marketing télévisé pour les produits alimentaires*, Op. cit., p. 4.

¹¹⁶ *Ibid.*, p. 13.

¹¹⁷ APA, *Report of the APA Task Force*, Op. cit.

¹¹⁸ CQPP, *Promotion intensive des boissons sucrées: un meilleur encadrement nécessaire pour protéger les jeunes*, Les dessous du marketing des boissons sucrées – Tome 4, p. 15, <https://www.cqpp.qc.ca/fr/salle-de-presse/promotion-intensive-des-boissons-sucrees-un-meilleur-encadrement-necessaire-pour-protger-les-jeunes/>

Roughly two years after industry representatives signed (...) the commitment charters related to advertising to children, the study by UFC-Que Choisir shows that self-regulation failed in terms of each aspect on which the voluntary mechanism is based: qualitative improvement of marketing communications, reduction of advertising budgets, and nutritional quality of products being marketed to children¹¹⁹. [Translation]

The 2016 legislation only applies to television commercials on the public channel: as it was slated to come into force in January 2016, it is still too early for its effects to be seen. However, to determine the effectiveness of self-regulation, the Conseil supérieur de l'audiovisuel (CSA) had to submit an annual report to Parliament reviewing advertising to children on public and private television channels. To date, elected representatives have yet to receive any such report¹²⁰.

In Norway, although the legislation stood up in the courts, with the withdrawal of several advertisements considered inappropriate, it is still being circumvented by advertisers operating from abroad. The Swedish Commercial Court ruled in a decision that advertisements directed at both children and adults could be aired, since it cannot be determined that they were intended for children¹²¹.

In the U.S., the current self-regulation appears to have the effect of limiting the depiction of food consumption, including junk food, without, however, controlling the quantity of advertising directed at children:

[T]he CARU guidelines have the effect of reducing the amount of advertisements that contain words and images directly encouraging excessive food consumption amongst children. The guidelines do not, however, deal with issues around the volume of food advertising targeted at children¹²².

General conclusion

Our main objective in this section was to assess regulatory developments in four countries in particular, namely those that had been chosen for analysis by Option consommateurs in their 2008 study. Our assessment of the developments over the last 10 years reveals that the regulation of advertising to children remains a serious concern in these countries, which continue to question and improve their practices in this area. However, industry forces are also at work preventing the adoption of overly restrictive legislation, with a definite impact on the scope of the measures that have been implemented, in particular in France and the United States.

Firm regulation by countries such as Sweden and Norway gives proven results. However,

¹¹⁹ UFC-QUE CHOISIR. *Marketing télévisé pour les produits alimentaires*, *Op. cit.*, p. 21.

¹²⁰ UFC-QUE CHOISIR. *Publicité pour enfants - La France mauvaise élève*, October 2018, <https://www.quechoisir.org/actualite-publicite-pour-enfants-la-france-mauvaise-eleve-n60073/>

¹²¹ OPTION CONSOMMATEURS, *La publicité destinée aux enfants*, *Op. cit.*, p. 71; "The Swedish Market Court argued that if the product in question can be eaten by adults as well, or if the program the advertisements are shown in connection with can be regarded as targeting the whole family, then the advertisement cannot be considered 'aimed' at children."

¹²² HAWKES, Corinna, *Marketing Food to Children: Changes in the Global Regulatory Environment*, *Op. cit.*, p. 31.

there are attempts at circumvention by the advertising industry and advertisers, with broadcasting from outside the country being one of the seemingly preferred ways to avoid having to comply with the measures in place.

It can also be noted from the study on the various forms of regulations in place in various countries to regulate junk food advertising to children that it has long seemed to more regulate the content and form of advertising rather than attempt to limit the consumption of certain foods, such as junk food, as was in fact noted by WHO¹²³.

This trend is being reversed over the last few years with the many recent publications showing the effects of the marketing of food and beverages that are unhealthy for children¹²⁴. We noted this through our study of the four countries and in our general literature review: pressure is increasing on the States to bring them to act by implementing efficient restrictive measures to curb the childhood obesity epidemic by imposing restrictions on junk food advertising in particular.

Canada is part of this paradigm shift with its stated willingness to ban junk food advertising to children. However, at the time of this writing, the final adoption of a bill, albeit very close to being realized, is slow to come about¹²⁵.

¹²³ *Ibid.*, p. iv

¹²⁴ In particular, this key report from 2016: WHO – Report of the Commission on Ending Childhood Obesity https://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066_eng.pdf?sequence=1

¹²⁵ DEAN, Tony, “Projet de loi S-228: un vote qui tarde,” *Le Devoir*, March 18, 2019, <https://www.ledevoir.com/opinion/idees/550069/projet-de-loi-s-228-un-vote-qui-tarde>

4. Canada: What Type of Regulation to Adopt?

The first chapters of this report resulted in several determinations:

- 1) The scientific literature has made great strides in the last few years to confirm the effects of marketing and advertising on the rate of childhood obesity, now considered a major global public health concern.
- 2) The Canadian federal government has long favoured self-regulation regarding advertising to children. However, this form of regulation has major shortcomings, reported here and elsewhere.
- 3) Since the 1970s, Quebec has chosen to ban all advertising to children, which therefore includes junk food advertising.
- 4) Among the countries we reviewed in more detail, there is a consensus on the harmful effects of advertising to children, with the predominant regulation of television advertising in order to control it, along with an all-around expression of political will to go even further, a strong trend backed by recent scientific studies.

Given the above, and especially current international practices along with recent changes under the pressure of major international institutions, what type of regulation should Canada adopt regarding advertising to children?

It seems clear that the Canadian government intends to adopt more restrictive legislation regarding junk food advertising to children in order to no longer simply rely on the self-regulation of the food and advertising industries. However, this willingness may possibly not take concrete form before the end of the 42nd Parliament, as federal elections are set for fall 2019.

Many other countries have also chosen to more strictly regulate the marketing of unhealthy foods, and a strong global trend, backed by major international organizations, is pushing others to do so, like Canada. In fact, given the global obesity epidemic, the developments over the last few years are tending to incite countries to tighten their regulation of commercial marketing practices, of the food industry in particular, given that the effects of advertising in this industry are more visible. The major international institutions – with the World Health Organization (WHO) and Consumers International at the top of the list – are also pressuring them to take such measures by publishing studies that more than ever show the link between marketing and the increase in childhood obesity rates.

In this respect, it is interesting to see WHO's criticisms of the policies adopted until now in various countries. In fact, WHO notes that "interest is growing among countries and, to a certain extent, appetite appears to be renewed to take stronger actions," but still concludes that:

- *Most existing action focuses on broadcast advertising only, despite clear evidence that children are exposed to marketing through many other avenues: in the digital sphere, via product display, and through packaging and sponsorship of HFSS foods. Countries therefore need to adopt a more comprehensive approach to HFSS food marketing regulation;*
- *Existing regulations typically limit their scope to child-oriented programming*

and focus primarily on advertising, leaving a broad range of programmes, media and marketing techniques to which children are exposed unregulated. Countries should therefore ensure that they focus on establishing policies to effectively reduce children's actual exposure to HFSS food marketing, rather than policies based on the classification of content or media;

- *Existing rules typically only seek to protect children up to a certain age (typically 12 or 13 years), even though a growing body of evidence suggests that adolescents are also negatively affected by HFSS food marketing. The scope of rules should be extended to protect all children;*
- *Countries have not always adopted effective food categorization systems to determine what foods should not be marketed to children. They should ensure that they use existing, or develop new, evidence-based nutrient-profiling systems that effectively identify unhealthy food according to nutritional quality;*
- *Countries have failed to effectively regulate cross-border marketing at a regional level; they should reflect on how better cooperation and harmonization could avoid weakening national HFSS food marketing restrictions and could strengthen efforts to address the global issue of food marketing in digital media¹²⁶.*

WHO concluded its report by stating the course of action to be taken, including ways to counter the industry's arguments, to tighten the regulation of junk food marketing and, in so doing, increase the protection of children:

The Committee on the Rights of the Child has noted that "most mortality, morbidity and disabilities among children could be prevented if there were political commitment and sufficient allocation of resources directed towards the application of available knowledge and technologies for prevention, treatment and care". [...]

More is required from States to implement the Recommendations and to comply with their obligations under the CRC to respect, protect and fulfil the rights of all children¹²⁷.

Few countries, if any, in fact respond with regulation following all of these criticisms made by WHO. However, there is a jurisdiction in North America whose legislation, effective and proven, contains many of these elements: Quebec.

It would seem quite logical for the Canadian federal government to follow suit by adopting legislation based on the Quebec model, which is already an international standard.

¹²⁶ WHO. *Policies to limit marketing of unhealthy foods to children fall short of protecting their health and rights*, October 2018, <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/news/news/2018/10/policies-to-limit-marketing-of-unhealthy-foods-to-children-fall-short-of-protecting-their-health-and-rights>

¹²⁷ WORLD HEALTH ORGANIZATION (WHO). *Evaluating Implementation of the WHO Set of Recommendations on the Marketing of Foods And Non-Alcoholic Beverages to Children* http://www.euro.who.int/_data/assets/pdf_file/0003/384015/food-marketing-kids-eng.pdf?ua=1

Let's see why.

A relevant historical recap

In late 1978, after work by the parliamentary commission and a study of each section of an innovative bill, Quebec made a choice that is unique in North America by including provisions in sections 248 and 249 of the new Consumer Protection Act (CPA) that would prohibit advertising to children under the age of 13, provisions that are still unchanged to this day (and which we covered earlier – see the section on existing legislation in Quebec).

When once again reviewing the various arguments raised by stakeholders prior to the adoption of the bill in 1980, it is clear that several of the same arguments are still brought up today, all around the world, to defend the same views¹²⁸. This realization is relevant from the standpoint of the federal government's adoption of similar legislation that would undoubtedly raise the same support and the same objections:

1978: Summary of arguments in favour of regulating advertising to children:¹²⁹

- Quebec children watch an average of 20,800 television commercials per year;
- The predominance of television advertising and its powerful impact on children;
- Children are defenceless against advertising because of their lack of maturity;
- Children are not the purchasers of the advertised products – this situation is a source of conflict between parents and children;
- Most advertising to children advertises food that is very high in sugar;
- Television advertising has a greater impact in disadvantaged children;
- In terms of the protection of children, we must not take any chances; reasonable doubt on the harmful effects of advertising is sufficient;
- Special status granted to minor children in the Civil Code.

1978: Summary of arguments against regulating advertising to children:

(there are roughly two types: arguments by advertisers [the industry and those who want to sell its products] – centered on the inefficiency of the legislation, freedom of speech, the benefits of advertising, etc. – and those by manufacturers [wanting to benefit from advertising revenues] – centered on culture, competition, employment, etc.)

- Advertising to children is currently well regulated;
- Banning advertising to children would not prevent children from being influenced by advertising;
- Advertisers are entitled to inform customers about their products;
- Advertising has an educational role: it teaches children to be informed consumers from a very young age;
- It is not scientifically proven that advertising is harmful to children;

¹²⁸ It is interesting to note that WHO often refers to these same industry arguments in its 2018 report and against which it proposes measures which, in several cases, were used in Quebec during debates that revolved around and followed the adoption of the ban of advertising to children. WORLD HEALTH ORGANIZATION, *Evaluating Implementation of the WHO Set of Recommendations*, *Op.cit.*, p. 37 and foll.

¹²⁹ RAMOISY, Jacqueline, *Le débat relatif au maintien ou à l'abolition de la publicité aux enfants: exposé des thèses antagonistes en présence*, Service de la recherche, Ministère des Consommateurs, Coopératives et Institutions financières, novembre 1978.

https://www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/AffichageNotice.aspx?idn=69242

- Banning advertising takes the responsibility away from parents, who are responsible for educating their children;
- Banning advertising will have several foreseeable consequences:
 - Loss of jobs in the toy industry;
 - Lack of information for consumers.
- Advertising subsidizes media and thus enables them to fund educational and cultural programs;
- Banning advertising will have several foreseeable consequences:
 - Fewer and lower-quality children's programs;
 - Drop in media revenue;
 - Loss of jobs and income for artists who promote products.

Still today, many are calling for the regulation of advertising to children to be abolished in Quebec¹³⁰. Some allege that the ban on advertising to children may cause several companies to leave Quebec, that the freedom of expression of companies is unfairly restricted¹³¹, and that the fact that children are still exposed to advertising through the “leaky border effect” (through advertising produced or broadcast outside of Quebec), but not only¹³², makes Quebec measures largely ineffective.

Television stations and producers allege that the shortfall resulting from the inability to earn advertising revenue for children's programs places them at financial risk and creates a competitive disadvantage with foreign programs, which may have more resources given that they are not subject to such prohibitions¹³³. Furthermore, the lack of advertising revenue could jeopardize local production of children's shows and weaken Quebec culture¹³⁴.

The same arguments are made at the Canadian federal level and even abroad. The report published by Health Canada in December 2017 entitled *Consultation Report: Restricting Marketing of Unhealthy Food and Beverages to Children in Canada* adequately summarizes the arguments of those opposed to regulating advertising to children:

A few contributors opposed any attempts to restrict marketing to children. Some felt that this type of intervention was incompatible with their position on the role of government. Others suggested that food choice decisions should be left up to the parent and that marketing to children is inconsequential, contending that children

¹³⁰ CTVM.info, “Média-Jeunes se penche sur la publicité dans les contenus jeunesse,” October 27, 2016, <https://ctvm.info/media-jeunes-se-penche-sur-la-publicite-dans-les-contenus-jeunesse/>. In 2016, Alliance Média-Jeunes held a conference entitled “Les enjeux de la publicité dans les contenus jeunesse,” with the following description: “In Quebec, the Consumer Protection Act prohibits commercial advertising to children under the age of 13. The context has changed since the legislation was created in the early 1980s. Would an update be in order? If the legislation were to be amended, what would the resulting social and economic impacts be? What effect does advertising have on children? Will broadcasters reinvest advertising revenues directly into the production of local youth content? A comparison of the different realities among broadcasters in Quebec, English Canada and abroad.” [Translation]

¹³¹ HEALTH CANADA, *Consultation Report*, Op. cit., p. 7.

¹³² BÉRUBÉ, Stéphanie. “La publicité destinée aux enfants se déplace sur le web,” in *La Presse*, March 1, 2009, <http://www.lapresse.ca/vivre/200903/01/01-832218-la-publicite-destinee-aux-enfants-se-deplace-sur-le-web.php>

¹³³ PILON-LAROSE, Hugo. “La publicité pour secourir la télé jeunesse,” in *La Presse*, October 21, 2016, <http://www.lapresse.ca/arts/television/201610/21/01-5032827-la-publicite-pour-secourir-la-tele-jeunesse.php>

¹³⁴ *Ibid.*

do not have buying power.

The economic impact on industry, in particular the marketing and food manufacturing industries, was also mentioned as a potential issue. Some felt these restrictions could impact industry's ability to reach adult audiences, which is not the intention of the initiative. This was particularly a concern among industry organizations and some professionals, who perceived these proposed restrictions as having a direct impact on their business interests.

Other comments suggested the government should be promoting and educating Canadians about healthy eating, including eating unhealthy foods in moderation, as opposed to and/or in addition to discouraging unhealthy eating habits¹³⁵.

The Health Canada report also contained the following arguments:

Industry stakeholders felt that the proposed definitions were too broad due to a risk that advertising to adults would be inadvertently restricted. In addition to concerns about the economic impact of an overbroad definition, a few identified possible infringement to freedom of expression under the Charter of Rights and Freedoms. Some also expressed concerns regarding implementation and enforcement due to the borderless nature of the digital environment and the ambiguity in defining online marketing¹³⁶.

The same arguments thus continue to be used to prevent any stringent legislation in Canada. Once again, a historical reminder of what occurred in Quebec will be useful in the present context:

1980s: enforcement of sections 248 and 249 in the case of Irwin Toy

Section 248 of the Consumer Protection Act, which prohibits any advertising to children, was quickly challenged in the courts by toy retailer Irwin Toy, which namely alleged that its freedom of expression was violated. Filed with the Québec Superior Court in 1980, the case made its way to the Supreme Court¹³⁷ after the majority Court of Appeal found in favour of Irwin Toy, concluding that “nothing in the cited studies indicates that any harm is caused to children merely from watching television commercials¹³⁸.” [Translation]

However, the majority of the Supreme Court found that “Children are not as equipped as adults to evaluate the persuasive force of advertising” and that “The legislature reasonably concluded that advertisers should not be able to capitalize upon children's credulity¹³⁹.”

In addition to the attorney general of four Canadian provinces and a Quebec television

¹³⁵ HEALTH CANADA, Consultation Report, *Op. cit.*, p. 5.

¹³⁶ *Ibid.*

¹³⁷ Irwin Toy Ltd. v. Québec (Attorney General), [1989] 1 S.C.R. 927, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/443/index.do>. The Superior Court rejected Irwin Toy's application for declaratory judgment, which argued that the contested provisions were *ultra vires* and, subsidiarily, infringed the Quebec Charter of Human Rights and Freedoms. On appeal, Irwin Toy also invoked the Canadian Charter of Rights and Freedoms that came into force after the Superior Court's judgment. The Court of Appeal allowed the appeal and found the infringement of freedom of expression under the Canadian Charter to be unjustified.

¹³⁸ Irwin Toy Ltd. v. Québec, 1986 CanLII 186 (QC CA).

¹³⁹ Irwin Toy Ltd. v. Québec, CSC, glossator's summary.

network, Réseau Pathonic Inc., the Coalition contre le retour de la publicité destinée aux enfants and the Office de la protection du consommateur intervened in the case. We have excerpted from the factums of the latter two interveners some of the arguments that they made before the Court.

Factum by the Coalition contre le retour de la publicité destinée aux enfants

The Coalition contre le retour de la publicité destinée aux enfants¹⁴⁰ intervened in the case to mainly argue that commercial speech is not protected under section 2(b) of the Canadian Charter of Rights and Freedoms and, subsidiarily, that sections 248 and 249 of the CPA constitute a reasonable and justifiable limitation to the freedom of commercial speech.

The Coalition reiterated in its factum the broad social consensus that developed over the years and that led to the ban on advertising to children representing the outcome of a true societal choice. The Coalition stated that:

[...] through the commercials that are broadcast, consumers are hindered in making informed decisions all the more as they are unable to decipher the subtle persuasive techniques being used, are repeatedly and continually subjected to these techniques, and are not given objective or complete information on the characteristics of the goods and services being advertised¹⁴¹. [Translation]

Further on, the Coalition adds:

[...] the purpose of advertising is not to first provide objective information on the quality, quantity and availability of goods and services, but to condition demand in order to increase the profits of the company using it. To do so, because of the fierce competition among companies, for instance, advertising must have the effect of creating desire, or even a need, among consumers. Can one reasonably say that such advertising does not have a disruptive effect in children? [...] As they are in the process of psychological, intellectual and moral development, children have yet to acquire the maturity to respond to advertising and fight back¹⁴². [Translation]

The Coalition continued its presentation by stating that children are not consumers under the economic meaning of the term, but that “compelling them to commercial advertising for children is somewhat like beginning consumer conditioning on a “blank slate” and removing the possibility of gradually learning about their freedom of choice as consumers, which they will need once they are adults¹⁴³” [Translation]. And parents are often powerless over the influence of advertising, as they themselves are subject to “modern commercial communication techniques¹⁴⁴” [Translation]. Furthermore, children often watch television or media without the parents being directly present, and in any case it would be impossible to prevent them from watching commercials, as this would mean also preventing them from watching television, print media, etc.

¹⁴⁰ The Coalition contre le retour de la publicité destinée aux enfants has been in existence since 1970 and intervened in support of the Mouvement pour l’abolition de la publicité aux enfants: the organization was incorporated in 1987 so that it could intervene before the Supreme Court in the Irwin Toy case.

¹⁴¹ Coalition contre le retour de la publicité destinée aux enfants, Factum, Supreme Court of Canada, Irwin Toy Ltd. v. Québec, 1989, p. 8.

¹⁴² *Ibid.* p. 16.

¹⁴³ *Ibid.* p. 17.

¹⁴⁴ *Ibid.*

The Coalition therefore believes that children are entitled to protection and that, following the demonstrations by the Attorney General of Quebec and the Office de protection du consommateur in their factum before the Court, only the prohibition, as stipulated in sections 248 and 249 of the Consumer Protection Act, is capable of adequately providing such protection in children as future consumers¹⁴⁵. [Translation]

Factum from the president of the Office de protection du consommateur

At the very beginning of its factum, the OPC cites the definition of advertising in the 1981 edition of *Le Petit Robert*: “The fact, the art of exerting psychological action on the public for commercial purposes,” and adds, a little later on, by quoting from the book *La publicité en action*¹⁴⁶ (1987) by well-known advertiser and university professor Claude Cossette:

To advertise is always, to some extent, to move forward on uncertain ground; only revealing the positive side of things, sacrificing for the sake of exaggeration, in short, dangling happiness. Especially, making people believe that a sense of achievement, success in life, a way to a better world do not require any ongoing personal efforts, that this can be achieved simply by acquiring a material thing. Advertisers, retailers and manufacturers live off of this duplicity¹⁴⁷. [Translation]

To justify the fact that the violation of the Canadian Charter of Rights and Freedoms which sections 248 and 249 may constitute is reasonable and acceptable, the following analogy is used:

Though it is true that partisan political expression consists of a lot of propaganda and tends also to only show the positive side of things, the fact remains that this type of expression provides information in a context of structural antagonism where not only each party examines, comments and publicly denounces the positions of its adversaries, but a whole slew of journalists, political commentators and citizens are also feeding, especially by the media, thinking and information that is counter to the ideas conveyed by others. Furthermore, the quality of political information is ensured through regulatory systems, such as the control of electoral expenses, equal distribution of broadcasting time among political parties, tax incentives for party funding, etc.: all factors that distinguish political expression from the all-powerful and one-sided monologue of advertising. If the advertising industry were to be disrupted to resemble political expression in this way, each advertising spot would require counter-advertising, and to ensure an equivalent presence and persuasive force to counter-advertising, through a tax incentive or otherwise, consumer associations and other interested parties would have to be given annual budgets of several million dollars; the result would be a whirlwind of action, comments and analysis by all types of stakeholders. If such a utopia were to come about, it would then be fitting to attribute to such a new form of expression democratic value and importance that are quite worthy of protection in a charter of rights and freedoms... But this will never happen¹⁴⁸. [Translation]

¹⁴⁵ *Ibid.*

¹⁴⁶ COSSETTE, Claude and R. DÉRY, *Pub! La publicité en action*, Québec, Ed. Riguil internationales, 1987.

¹⁴⁷ OFFICE DE LA PROTECTION DU CONSOMMATEUR, Factum, Supreme Court of Canada, Irwin Toy v. Québec, 1989, p. 4.

¹⁴⁸ *Ibid.*, p. 4-5.

Citing examples, the factum states that Canadian and Quebec legislation has always recognized the vulnerability of children under the age of 14: Young Offenders Act, Highway Safety Code, Public Health Protection Act, some sections of the Criminal Code. Even the industry recognizes it in the Canadian Association of Broadcasters' code or in Radio-Canada's advertising standards.

The factum also cites several studies that were conducted prior to the adoption of sections 248 and 249 but that still confirm the relevance of these provisions¹⁴⁹.

Several observations are made in the factum, at times in very forceful terms, that justify that sections 248 and 249 be maintained, according to the OPC:

Advertising propaganda thus has a devastating effect, acquired without resistance, and even obtains, through such manipulation of defenceless young minds, allies in selling products to parents. (p. 11)

In all cases where giving in to a child's demands is not desirable, parents have to counter the persuasive effects of advertising. With the latter's powerful capacity to create in defenceless children needs that are unrealistic and incompatible with parents' values and resources, the latter can only oppose rational arguments, disproportionate and inadequate means given the child's age, to attempt to get the child to give up. (p. 15)

There is thus a gaping hole here to have parents give up irrational consumption, and the industry is well aware of this flaw, especially that of never being able to convince responsible adults to buy their products, such as chocolate-coated cereal, candy or cheap toys that are particularly violent, not very educational or very costly. (p. 14)

Advertising to children therefore favours emotional instability, a sense of dissatisfaction and materialism – namely, the preference for material things instead of socializing and relationships with peers. This influence on the developing personality of children has been a source of concern, studies and warnings from several authors and experts. (p. 16) [Translation]

This negative impact has a more pernicious influence on disadvantaged children. In a study by Palmer and Dorr, 75% of children from low-income families perceived the family shown in a commercial as happier than theirs, whereas only 4% of children from middle-income families had the same perception. (p. 17) [Translation]

The OPC thus concluded the following:

In accordance with the framework of the Oakes decision (1986), observance of these values sought after by legislators, by banning advertising to children, is a key objective and constitutes a pressing and substantial social concern. Furthermore,

¹⁴⁹ For instance: FEDERAL TRADE COMMISSION, *In the Matter of Children's Advertising, FTC Final Staff Report and Recommendation*, published in 1981, which concluded that there was a need to prohibit advertising to children based on a review of hundreds of reports and the hearing of numerous international experts. Also: D. ROEDDER *et al.*, "Attitude-Behavior Consistency in Children's Responses to Television Advertising," *Journal of Marketing Research*, 1983; R. ROSS, R. *et al.*, "When celebrities talk, children listen: an Experimental Analysis of Children's Responses to TV Ads with Celebrity Endorsement," and C. MACKLIN, "Do young children understand the selling intent of commercials?," *Journal of Consumer Affairs*, 1985.

the 'limit' imposed is reasonable since the means that are used rationally meet this sole objective by only prohibiting that children's vulnerability be used to reach the true buyers¹⁵⁰. (p. 18) [Translation]

Supreme Court judgment

The Supreme Court concluded that sections 248 and 249 of the Consumer Protection Act infringe freedom of expression, which includes commercial speech, but that this infringement is justified since the provisions in dispute involve a pressing and substantial concern, and that the measures adopted are proportional to the aim. The majority therefore determined that the provisions contested by Irwin Toy are valid.

The Supreme Court stated that it was in fact convinced that the vulnerability of children under the age of 13 to the techniques of advertising was the Quebec legislator's main concern when adopting the ban. This is a pressing and substantial concern, according to the majority judges, because advertisers must be prevented from exploiting children under the age of 13 and the protection of all of these children is an important objective¹⁵¹.

In our view, the Attorney General of Quebec has demonstrated that the concern which prompted the enactment of the impugned legislation is pressing and substantial and that the purpose of the legislation is one of great importance. The concern is for the protection of a group which is particularly vulnerable to the techniques of seduction and manipulation abundant in advertising. In the words of the Attorney General of Quebec, [TRANSLATION] "Children experience most manifestly the kind of inequality and imbalance between producers and consumers which the legislature wanted to correct." The material given in evidence before this Court is indicative of a generalized concern in Western societies with the impact of media, and particularly but not solely televised advertising, on the development and perceptions of young children. [...] Broadly speaking, the concerns which have motivated both legislative and voluntary regulation in this area are the particular susceptibility of young children to media manipulation, their inability to differentiate between reality and fiction and to grasp the persuasive intention behind the message, and the secondary effects of exterior influences on the family and parental authority. Responses to the perceived problems are as varied as the agencies and governments which have promulgated them. However the consensus of concern is high.

[...]

Children are not as equipped as adults to evaluate the persuasive force of advertising and advertisements directed at children would take advantage of this. The legislature reasonably concluded that advertisers should be precluded from taking advantage of children both by inciting them to make purchases and by inciting them to have their parents make purchases. Either way, the advertiser would not be able to capitalize upon children's credulity. The s. 1 and s. 9.1 materials demonstrate, on the balance of probabilities, that children up to the age of thirteen are manipulated by commercial advertising and that the objective of protecting all children in this age group is predicated on a pressing and substantial concern¹⁵².

The judgment, in its assessment of the proportionality of the legislative initiative and the

¹⁵⁰ OFFICE DE LA PROTECTION DU CONSOMMATEUR, Factum, Supreme Court, *Op. cit.* p. 18.

¹⁵¹ *Ibid.*

¹⁵² Irwin Toy Ltd. v. Québec, S.C.R. 927, *Op. cit.*

resulting violation of fundamental rights, stated clearly – albeit tersely – that Irwin Toy’s sole economic concern is outweighed by the protection objective of the ban on advertising to children.

*The real issue at the root of the challenge of the legislation is that it affects revenues to some extent. This simply means that advertisers will have to come up with new marketing strategies for children’s products*¹⁵³. [Translation]

Today, the Senators who defend Bill S228 are already using the legal achievements from the experience in Quebec, such as Senator Seidman, who stated the following in October 2018 to defend the target age of 13: “The fact that this particular target age had already survived a Supreme Court challenge of Quebec’s own legislation, passed in the 1980s, made this choice compelling. The Supreme Court ruling did categorically find that advertising to children was ‘per se manipulative’¹⁵⁴.”

Popular support that is still strong in Quebec

In February 2018, we conducted an online survey among our mailing list subscribers which we also posted on Facebook. A total of 233 persons responded to the survey. While not backed by scientific evidence, the results of the consultation nonetheless allow a few relevant observations to be drawn¹⁵⁵. The responses clearly show very strong popular support in favour of maintaining, and even tightening, Quebec measures aimed at regulating advertising to children. No fewer than 96% of respondents said they were in favour of maintaining the existing legislation¹⁵⁶.

We also asked respondents what concerns them about the advertising to children they see. Among the 82 comments received, the fact that children are still too young, immature and gullible to be exposed to advertising was brought up all too frequently: respondents stressed the fact that children do not yet have the necessary judgment or capacity for differentiation. Many respondents also mentioned the consumption stimulus inherent in advertising, and the fact that advertising creates expectations, which are then difficult to manage by parents.

In short, the arguments made in the 1970s to justify the need to prohibit advertising to children still appear to be widely shared by the public in 2018.

Prohibiting all advertising to children, including junk food advertising: for the sake of simplicity

Developments in neuroscience, which confirm the immaturity of a child’s brain and his

¹⁵³ *Ibid.*

¹⁵⁴ *Debates of the Senate, Official Report*, October 18, 2018, 1st Session, 42nd Parliament.

¹⁵⁵ The fact that the invitation to take the survey was sent to consumers who are likely more aware of consumer issues than the average person may have skewed the results. As a result, it is not surprising to see the level of respondents’ awareness of the existence of legislation that regulates advertising to children in Quebec (85%), but we hesitate to consider it as representative. However, the high numbers of respondents who support the ban on advertising to children and those who believe it is appropriate may not be affected to the same degree by this bias, and may be closer to a widespread feeling among Quebecers. However, this has to be verified.

¹⁵⁶ UC 2018.

inability to properly understand the purpose of an advertisement, reaffirm the need to prohibit all types of advertising directed at children (toys, etc.), and not only related to junk food.

Adopting legislation in Canada that prohibits all types of advertising would also make the ban much easier to manage. This can be seen in the consultations which Health Canada conducted in 2017: it is not easy to define what consists of junk food, or unhealthy food, and no easy consensus can be reached.

Why, then, not apply all the arguments on the harmful effects of advertising on vulnerable child consumers to all types of advertising to children? This would not only help combat obesity but also debt, excessive consumption, gender stereotypes, etc.

The World Health Organization starts with an initial determination of a global obesity epidemic to draw up its recommendations on food advertising to children. During this study, our initial observation was different, namely, the need to protect vulnerable child consumers. Based on this determination, it appears logical to adopt regulation that is based on Quebec legislation, which is proven, has stood up in court, and had positive effects.

5. Conclusion

The experience of foreign jurisdictions, while Quebec remains the world leader with its bold legislation, makes us realize that children are still targets of the industry and advertisers.

Numerous parliamentarians, groups and coalitions are therefore still pushing for a restrictive regulation of advertising to children worldwide¹⁵⁷. It must be noted, however, that Quebec, the standard-bearer in this area and cited numerous times as a model, has few jurisdictions at its side that have gone as far in regulating advertising to children. Our historical recap clearly shows that the countries that are currently debating this issue are dealing with the same objections and barriers as Quebec did in the 1970s. The fact that 40 years have gone by since the legislation was adopted in Quebec sheds valuable light on the various arguments raised today, in particular those of opponents.

Fortunately, the way of thinking of organizations and governments (e.g. WHO, France, and others) is evolving, along with scientific research, and everything seems to be converging toward the need to apply more restrictive regulatory measures for advertising to children. The impetus from major international institutions, with WHO at the top of the list, is a key factor, along with the observation of the mixed results of the self-regulation measures that have been implemented.

Prohibiting all advertising to children in Canada is more appropriate now than ever, not only to combat obesity but also gender stereotypes, toys that make children sedentary, consumerism, and to ensure a media environment that encourages the healthy psychological and social development of children.

In this respect, we find our recommendation to the federal government to adopt legislation similar to that in Quebec and to prohibit advertising to children, whether involving junk food or any other products, to be appropriate, realistic and in line with scientific developments as well as changes in international practices, which tend to be moving toward a more restrictive regulation of the marketing of products to children.

In so doing, the Canadian government will avoid certain pitfalls, including that of defining unhealthy foods based on a certain recommended daily value of salt, sugar and fat, and at the same time will affirm its commitment to protect children against the undue influence of advertising to ensure their physical and mental development in an environment that is free as much as possible from the influence of retailers' persuasive techniques.

We are therefore inviting the Canadian government to go even further in its intention to better regulate advertising to children and adopt a complete ban that would be modelled after the one established by Quebec measures. The level of protection of children, along with the popular support resulting from such an approach, will be all the more stronger.

¹⁵⁷ HAWKES, Corinna, *Marketing Food to Children*, *Op. cit.*, p. 9. Or, for instance, in the U.S., the major *Campaign for a commercial-free childhood*, which brings together parents and health and education professionals to advocate the ban of advertising to children: CAMPAIGN FOR A COMMERCIAL-FREE CHILDHOOD. <http://www.commercialfreechildhood.org/>

6. Recommendation

Based on the preceding:

Union des consommateurs is recommending to federal legislators to follow the model adopted by Quebec and totally ban advertising to children under the age of 13.