

Junk Food Advertisement targeted towards Children

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Prevalence of Junk Food Advertisement in India

- Junk food advertising targeted at children and adolescent - a billion dollar industry: Bombardment of ads geared towards pushing high-calorie and low nutrition snacks down the kids throat.
- Ads aimed towards children use tools like cartoon characters, sweepstakes prizes or a celebrity famous among children to sell junk food.
- Disturbingly the amount of such advertising is increasing.

Present Regulatory structure to Control advertising of the Junk Food

- In India, no specific law or guidelines dealing with regulation of the advertising in the media or marketing communication of the junk food.
- Provisions in different statutes and some guidelines issued by self-regulating body ASCI may be used to regulate the advertising in media of junk food.

Constitution of India

- Under the Directive Principles of the State Policy, state has to take steps for the protection and promotion of the public health.
- Right to health is a fundamental right under Article 21 of the Constitution of India; every citizen has right to his health as fundamental right.
- Thus, state has a responsibility to regulate the junk food advertisement.

Consumer Protection Act, 1986

- No specific provision under the Act which deals with the regulation of advertising of food products.
- Provisions exists for prohibition of the conduct which is misleading or deceptive, or likely to mislead or deceive.

- Section 2(1)(r) of the Consumer Protection Act, 1986 defines “unfair trade practice” as a trade practice which, for the purpose of promoting the sale, use or supply of any goods.....adopts any **unfair method or unfair or deceptive practice....**
- The consumer forum has power to issue directions to a party on a complaint of a consumer to discontinue unfair trade practice.

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- Advertisement or promotion of the junk food using false representation that the food or beverages are of a particular composition, or quality etc. or falsely representing characteristic, uses or benefits which such food or beverages do not have or making false or misleading representation relating to the need or usefulness of the goods, or representing that anybody consuming such food is likely to have super hero like quality may come under the ambit of the Act and remedy may be availed under the provisions.
- Use of Consumer Protection law in India to counter advertising in junk food is **rare and law is still not settled in this regard.**

Food Safety and Standards Act, 2006

- Food Safety and Standards Act does not define any food as junk food or fast food. All food that has been categorized as junk food falls under the category of proprietary food-which is food not standardized under regulations. This category of food is only expected to declare their composition or nature of food and comply with general regulations under the Act. FSSAI has been established under the Act.

Lesson from Australian Consumer Protection legislation

- In Australia, new Consumer protection law *Australian Consumer Law* (ACL) provides for **civil remedies including restraining orders and damages**), and for false or misleading representations criminal sanctions are also applicable by way of imposition of substantial fines.
- The ACL has given powers to the national regulator, the Australian Competition and Consumer Commission (**ACCC**) to issue substantiation notices, public warning notices and infringement notices as well as seeking significant civil pecuniary penalties from the courts.
- In India as well, Consumer forum must be vested with such powers.

ADVERTISING STANDARD COUNCIL OF INDIA (ASCI) GUIDELINES

- ASCI autonomous and self regulating body to regulate advertisements in India, not legally binding but functions as guidelines for self regulation
- Basic guidelines on the junk food advertising on different media:
 - I. To ensure truthfulness, honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
 - II. To safeguard against indiscriminate use of advertising for promotion of products hazardous to society or to individuals to a degree or of a type unacceptable to society at large.

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- If ads or promotion of the junk food contains material which is false or misleading advertisement or indiscriminate advertisement for the promotion of products which are hazardous to public health, then the abovementioned guidelines are infringed.
- In India, self regulating body ASCI has been found wanting to take measure to ban indiscriminate advertisement promoting excessive consumption of the junk food.

AANA Australian Association of National Advertisers
(AANA) has introduced AANA Food and Beverage Code
and AANA Children's Code

- Both codes deal with advertising or marketing communications in any media directed primarily to persons **14 years or younger**. *AANA Food and Beverage Code* requires that all advertisement or marketing communications to children **should not exploit children's imaginations based on an intent to encourage children to consume excessive quantities of food or beverage products;**
- **Advertisement should not state or imply that a particular product will afford physical, social or psychological advantage over other children;**

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- **Not undermine the role of parents in guiding diet choices;**
- **Not to include any appeal to children to urge parents to buy a product for them;**
- **Not feature ingredients or premiums (such as free gifts) unless an integral element of the product being offered.**
- The code of ethic as mentioned above should be incorporated by the ASCI in its code to regulate the indiscriminate advertising and promotion of junk food and beverages.

Industry's idea of self regulation should not be happy meals with apple slices

- In the name of self regulation in US in 2006 due to increasing criticism from public health community and federal government, fast food industry launched the Children's Food and Beverage Advertising Initiative. Under the Initiative, companies pledged to market "better-for-you" foods for children.
- McDonald's Happy meals with fries, apple slices and fat free chocolates milk: despite the free and healthy offering of an apple slice, a plain hamburger still has more than 550 calories !!!

Cable Television Networks (Regulation) Act, 1995

- The aforementioned Act in its Section 6 contains programme codes which all the advertisement on the television must adhere. However, the code does not include any stipulation which may have the effect of regulating advertising of junk food.

Multilateral efforts to restrict or ban junk food advertising

- World Health Organisation (WHO) has urged countries to reduce exposure of children to marketing promoting junk food by implementing a set of international recommendations.
- In May 2010, WHO member-states endorsed a new set of recommendations on marketing foods and non-alcoholic beverages to children, calling for national and international action to reduce exposure of children to ads that promote foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- The member-states suggested legislations or policies, intergovernmental collaboration and cooperation with civil society and public and private stakeholders to blunt powerful tools aimed at marketing such foods to children.
- WHO also asked countries to put in place a system to monitor and evaluate implementation of the recommendations.

Overview of Worldwide Efforts to curb junk food advertising and promotion

■ Ireland

- New Broadcasting Authority of Ireland (BAI) Code has provisions contained therein especially relating to foods that are defined as having a high fat, sugar or salt content (HFSS).
- The draft Code proposes a complete ban on ads for such food or drinks during children's programming and also a complete ban on the use of or endorsement by licensed characters (e.g. movie characters), programme characters or celebrities and sports stars.
- It is also proposed to ban promotional offers on products that fall within the HFSS definition.

■ Experience of Quebec

- Clearer evidence comes from a long-term study in Quebec where fast food advertising geared specifically toward children has been banned both online and in-print for the last 32 years.
- Research has shown that the province has the least childhood obesity of anywhere in Canada, and the ban decreased children's consumption by an estimated two or four billion calories.

■ Chile

- A new Law concerns packaged food that is considered **high in calories, fat, salt or sugar**.
- Products are determined by the Ministry of Health to be high in calories, fat, salt or sugar must be **identified** as such in the **product's label**.
- It **bans** the sale and **advertising** of these types of products within school premises, including elementary, middle and high **school**.
- Advertising of these products to **children below 14** years of age is prohibited.
- The use of “**commercial hooks**” such as offering toys or prizes, in connection to the sale of these products is banned. Consequently, some marketing strategies that are common today such as Macdonald Happy Meals and Kinder Chocolates could no longer be used.

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- In **Britain**, the country banned junk food in schools in 2005. A ban on junk food ads during television programs aimed at children below 16 years came into force in August 2008.
- In an example of self regulation, Disneys proposed ban from 2015 on all junk food advertising on its TV channels, websites and radio programmes.
- Elementary schools in US in States of Arizona, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Jersey, New York, and West Virginia **have already banned the sale of junk food in schools.**

- **Hungary** - "chips tax" on food high in salt and sugar, soft and energy drinks, beverages with fruit content lower than 25%.
- In **Denmark** : special taxes on butter, meat, pizza.
- **Scotland**: In March 2012 proposed to ban advertisements of junk foods in television shows aired before 9 pm.
- **Switzerland and Austria**, have also already banned trans-fats, while Finland and Romania are considering fat taxes.
- **Brazil, Mexico and Taiwan** too are working towards getting a fat tax in place.

Proposed Guidelines at the Court's intervention

- Delhi High Court directed the Food Safety and Standards Authority of India (FSSAI) to frame guidelines on implementing rules to ban junk food in and around schools in an order on a Public Interest Litigation (PIL), filed by Uday Foundation (an NGO).
- The FSSAI undertaking a project for development of guidelines for making available quality and safe foods in school and has invited proposal from experienced agencies, organizations, institutions for development of guidelines for making available quality and safe food in school.

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- **FSSAI** guidelines are expected after the court directive in which the FSSAI likely to restrict selling and advertisement in junk food for children.
- **FSSAI's** move comes in the backdrop of WHO's labelling of childhood obesity as one of the most serious public health challenges of the 21st century.

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- The recommendation for a ban on telecasting celebrity-endorsed advertisements on such high-salt and cream-packed foods to influence kids will be the part of the FSSAI's proposed guidelines being prepared for schools to make available only nutritious foods in their canteens.
- The Authority has already initiated talks with the Prasar Bharati in this regard.
- To begin with FSSAI will seek a ban on airing such advertisements during children's program in the morning.

Suggested Guidelines: What we can learn from other countries

- While some countries have taken off advertisements of such products from prime time television and radio and regulated their marketing, a large number of countries, particularly developing nations such as India, are yet to take proactive measures.
- Experience of other countries throw up following guidelines or regulations to be followed in connection with advertising of the Junk Food.
 - A complete ban on promotion of junk food in and around school.

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- A complete ban on ads promoting the junk foods (TV, Online media, print media)
- A complete ban on sale of junk food inside school.
- No more promotional offers on junk foods.
- If complete ban advertising or marketing communication is not possible, these advertisement or marketing communication may be restricted in the following ways:
 - Restricting airing or visibility of such advertisement or marketing communication for children by not allowing airing of such program during prime time when children are likely to watch such program.

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- Part of advertisement promoting junk food should contain health advisory about the possible junk effect of the junk food which can be illustrated in the same way as the junk food is promoted in such advertisements.
- Providing adequate information about ingredients and contents of junk food in such advertisement for sufficient duration should be made mandatory so that it can be easily comprehended by the viewers.

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- Any false or misleading information or not complying with above mentioned guidelines should be brought under Consumer Protection Law or under the program code of Cable Television Networks (Regulation) Act, 1995.
- Advertisement and marketing communication of junk should be dealt under the law in the similar manner as has been done with advertisement and communication of the Tobacco products or Alcohol considering its bad health consequences for population in general and children in particular.



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