

Regulation of Nutrition and Health Claims in Advertising

ROSS BRENNAN

Middlesex University
Business School
R.Brennan@mdx.ac.uk

BARBARA CZARNECKA

Middlesex University
Business School
B.Czarnecka@mdx.ac.uk

STEPHAN DAHL

Middlesex University
Business School
S.Dahl@mdx.ac.uk

LYNNE EAGLE

University of the West
of England
Lynne.Eagle@uwe.ac.uk

OLGA MOUROUTI

Middlesex University
Business School
O.Mourouti@mdx.ac.uk

This article reviews the intentions and assumptions underlying calls for greater regulation of nutrition and health claims in food advertising and examines the likely impact of new European regulations on health-related claims. After providing a review of the literature concerning regulatory effectiveness and on nutritional and health-related claims in advertising, we present a qualitative analysis of television advertisements aired on British television using a coding framework based on recently approved European Union regulations. There is little reason to expect health-related claims in food advertising to become clearer to consumers as a result of the regulations.

INTRODUCTION

The Health Committee of the British House of Commons has concluded that around two-thirds of the population of England are overweight or obese. In addition to the many social and personal costs to which this contributes (including premature death and many health disorders), the Health Committee estimated the economic costs to be between £6.6 billion and £7.4 billion per year. Many factors have interacted to bring about this obesity epidemic, but the Committee is in no doubt that the advertising of highly energy-dense foods is implicated (House of Commons Health Committee, 2004). Here we have, in a nutshell, the case for regulating nutrition and health claims in food advertising: this is a matter that is allegedly far too important and far-reaching to be left to the uncertainties of self-regulation in an essentially free market—legislation is apparently the only sensible course of action. In this article, we will examine this proposition critically from the perspective of marketing communications.

The need for, and efficacy of, the regulation of health claims made as part of persuasive communication such as advertising has been the subject of vigorous, and at times acrimonious, debate for over 30 years (Bell, 1974; Byrd-Bredbenner and

Grasso, 2001; Tppolito and Mathios, 1991). The issue has received considerable attention in the light of growing concerns in the developed world about rising obesity rates and the presumption that there is a link with advertising of foods high in fat, sugar, and salt (Danner and Molony, 2002; Sibbald, 2002).

Various forms of legislation and regulation have been proposed, implemented, and criticized in a number of countries (Bell, 1974; Boddewyn, 1989), and there still remains no consensus even between the United States and the European Union (EU). In spite of protests from the food manufacturing sector, and in the absence of clear empirical evidence of negative effects from food promotion, future regulatory measures are likely to be based on "a judgement of probable influence" (Livingstone, 2005, p. 278). This appears to be the basis for the recent initiative of the European Parliament (CEC, 2003):

As food production has become more and more complex, consumers are increasingly interested in the information appearing on food labels. They have also become more interested in their diet, its relationship to health, and, more generally, the composition of foods that they are selecting.

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For these reasons it is important that information about foods and their nutritional value appearing on the labelling and used for their presentation, marketing and advertising should be clear, accurate and meaningful (Clause 8, p. 3).

Some consumer organisations in the European Union consider that products that do not have a "desirable" nutritional profile, such as candies, high salt and high fat snacks or high fat and sugar biscuits and cakes should not be allowed to bear claims. For example, a "low fat" claim should only be allowed if the product does not contain high qualities of sugar or salt; or a "high calcium" claim should not be used on a product with a high fat content. They consider that such foods would become more attractive because of the way in which they will be labelled and advertised and many consumers that are currently eating them in moderation would consume them in greater quantities. This, they believe, would have a more immediate negative effect on the dietary habits of certain particularly vulnerable sections of the population, like children and adolescents (Clause 13, p. 4).

The passage of the proposed regulations was not smooth, with more than 600 amendments being proposed by a range of interest groups; The European Parlia-

ment voted to delete the nutrient profile clause, only to have their decision subsequently overturned by the Council of the European Union (EurActiv, 2006b). It is interesting to note that, while the regulations were passed in mid-May 2006 (*EU Business*, 2006), the nutritional profile provision (Article 4) was subject to what some business sources refer to as a "slight amendment" (*Pharmaceutical Business Review*, 2006, p. 1). It will now be permissible to make a nutrition claim (for example in relation to the "low fat" example cited above), even if the product's ingredients do not match the nutritional profile, if it is high in *either* sugar or salt, but not if it is high in *both* sugar and salt. The high level of whichever substance is deemed not to fit the nutritional profile, however, must be clearly displayed on the label, with a specific statement "in close proximity to, on the same side and with the same prominence as the claim" (European Parliament, 2006, p. 6). It is not clear exactly what wording will be required in advertising, yet the regulations are clearly intended to apply to the "labelling, presentation and advertising of foods" (CEC, 2003, p. 2). The potential for confusion that this may create appears to have escaped some stakeholders, with the European Breakfast Cereal Association and the association representing European small- and medium-sized enterprises (UEAPME) viewing the amendment as a positive compromise and in the interests of consumers (EurActiv, 2006a; UEAPME, 2006).

In this article we review the potential effectiveness of the European regulations by first providing an overview of the literature on the need for, and predicted effectiveness of regulatory measures, and on consumer understanding of nutritional and health-related claims in advertising. Subsequently, we report on an empirical project designed to investigate current practice in nutritional and health-related claims in food advertising on British television. The claims made are analyzed to establish whether or not they would be acceptable under the proposed EU legislation. Finally, we address the need for future research that will improve our knowledge of nutritional and health-related claims in food advertising, and of consumer response to such advertising.

STATUTORY REGULATION AND SELF-REGULATION

A fundamental question in the debate about health claims in advertising concerns the appropriate balance between statutory regulation through legislation and self-regulation by the industry itself. In general terms, this is simply one manifestation of the perennial question of the extent to which the state should intervene directly in the activities of private enterprises. There are those who argue that the general presumption should be against intervention, for example Seldon (2004, p. 225): "The history of government regulation vividly demonstrates the inability of the political process to cure a failure of the market process." Kay (2004) argues that the general argument about self-regulation and statutory regulation depends on two key factors—information and incentives. Industry insiders have privileged access to information (information asymmetry) and are therefore best placed to formulate effective regulations, but on the other hand: "Self-regulating entities

do not have much incentive to take regulation seriously, and government does" (Kay, 2004, p. 370). Hence, arguments based on the availability of information suggest self-regulation, whereas arguments based on incentives favor statutory regulation. The ideal solution, Kay suggests, is not for governments to intervene directly in business affairs (for example, by banning certain behaviors), but to intervene indirectly by striving to alter the incentives faced by producers.

In the specific case of health claims in food advertising, the merits of self-regulation have been vigorously debated for decades. Support for self-regulation is based on greater cost-effectiveness and faster resolution compared to central regulation or legislation (Borrie, 2005; Kerr and Moran, 2002). The main arguments against self-regulation have been that it is relatively ineffective, because the incentives to comply are insufficient, breaches of the self-regulatory framework are common, and the penalties for infringements are relatively small (Boddewyn, 1989; Howarth, 2004). In its report on obesity, the British House of Commons Health Committee referred to several cases that caused members to doubt the effectiveness of the self-regulatory system that is used to control advertising in the United Kingdom (House of Commons Health Committee, 2004).

The efficacy of government regulation or legislation is, however, not universally accepted as Boddewyn (1989, p. 19) notes that "it is too readily assumed that if the market fails, only government regulation

can correct its shortcomings" and that "there are readily observable limits to what regulation, as a form of societal control, can achieve." Indeed, there is considerable disagreement between the United States and the EU as to the need for or potential effectiveness of regulation in combating rising obesity levels. The United States leans toward self-regulation and personal choice, whereas the EU has indicated that they believe that "we also need legislation to oblige industry" (*Market-Watch*, 2006).

HEALTH-RELATED CLAIMS IN ADVERTISING, SKEPTICISM, AND PERSUASION KNOWLEDGE

Advertising can contribute to consumer dietary knowledge and subsequent behavior. Following a decision by the American Food and Drug Administration (FDA) to require any diet-disease health claims to be supported by drug approval procedures, the first major advertising campaign in the United States to make an explicit diet-disease claim backed by conventional scientific evidence was Kellogg's 1984 promotion of awareness of the relationship between consumption of dietary fiber (contained in products such as Kellogg's All Bran cereal) and the reduced risk of some forms of cancer (Byrd-Bredbenner and Grasso, 2001). Not only was there an increase in sales for the advertised product, but also in consumers' overall knowledge of the benefits of dietary fiber in reducing health risks. There is evidence that the communications medium—commercial advertising—

rendered the message more accessible to educationally disadvantaged groups that would have been less likely to see and comprehend standard public health messages (Ippolito and Mathios, 1991).

Not all claims, however, are meaningful or supported by adequate scientific proof; the worst are not even credible. Byrd-Bredbenner and Grasso (2001, p. 38) observe that "in their zeal to gain a competitive edge, advertisers also push the limits of what science could support and what consumers would believe." There is also considerable evidence that false claims decrease the credibility of true claims (Calfee and Pappalardo, 1991), a view supported by McCartney (2005, p. 2) who suggests that "rubbish claims in face cream adverts may end up undermining the proper science that we read about in the stories next to the adverts"—a factor that may explain the growing amount of consumer skepticism regarding advertising. Obermiller and Spangenberg (1998, p. 160) defined skepticism toward advertising as "the tendency toward disbelief of advertising claims ... a stable, generalisable marketplace belief, one of the overarching propositions that compose a consumer's implicit theory of how the marketplace operates." Advertising skepticism is probabilistic, meaning that the more skeptical the consumer, the greater the probability that he or she will disbelieve an advertisement. There is considerable evidence that most consumers are skeptical toward advertising. Calfee and Ringold (1994) examined published survey results over a six decade period (the 1930s to the 1980s) and found that, consistently, roughly 70 percent of American consumers believed that advertising was often untruthful. During this period the degree of regulatory control over advertising varied widely, but this was found to have little effect on consumer skepticism toward advertising. Therefore, whatever other

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effects increased statutory control of advertising may be expected to have, it is unlikely to reduce consumer skepticism toward advertising.

Consumers are largely unaware of government regulations regarding what claims can be made for products (Garretson and Burton, 2000) and have a "low level of trust in industry-supplied information" (Teisl, Levy, and Derby, 1999, p. 197). In relation to nutrition information, one study found that, unsurprisingly, skeptical consumers are "less likely to use information they do not believe and are more likely to search for other information they perceive as more accurate" (Szykman, Bloom, and Levy, 1997, p. 236). It is not clear what alternative sources of information are used and how accurate the information gained from them is—or how accurately it may be interpreted. Perceiving that an advertiser is actively attempting to persuade or manipulate consumers may lead to active resistance to the advertising message, consistent with the predictions of the Persuasion Knowledge Model (PKM) (Friestad and Wright, 1994). The PKM suggests that people's persuasion knowledge develops through time both within individuals and within cultures, while Friestad and Wright (1994) also believed that persuasion knowledge would be culturally contingent. This suggests that the responses of individuals and societies to health claims in marketing communications will change through time (as their persuasion knowledge develops), and that the responses to health claims will vary systematically from one culture to

another. Obermiller and Spangenberg (1998) noted that while persuasion knowledge and advertising skepticism are likely to be related—greater persuasion knowledge leading to increased skepticism—they are conceptually distinct, and that persuasion knowledge is a higher-order concept than advertising skepticism. The distinction is particularly important when it comes to nutritional claims. Consumers with very high advertising skepticism are simply disinclined to believe advertising claims such as "low fat" or "for a healthy heart," whereas consumers with very high persuasion knowledge are well aware of the advertisers' motives and tactics, but are prepared to evaluate the claims using the available objective evidence. As Obermiller and Spangenberg (1998) suggest, the highly skeptical consumer will simply refuse to be persuaded, whereas the consumer with high persuasion knowledge can be persuaded if presented with the right evidence.

NUTRITION CLAIMS, NUTRITIONAL KNOWLEDGE, AND HEALTH LITERACY

Nutrition labeling has been mandatory in the United States for most foods since 1994; however, the situation is very different in the EU where no such labeling provisions exist. The expectation appears to be that such labeling would provide consumers with information upon which to make informed choices, ultimately leading to public health benefits such as reductions in heart disease through healthier diets (Andrews, Netemeyer, and Burton, 1998). There are inconsistencies: in the

United States diet, disease claims have been permitted in advertising, but not on product labeling unless the product was reclassified as a drug (Byrd-Bredbenner, Wong, and Cottee, 2000). Further, although proposed EU changes to nutrition and health claims on foods, released for consultation in 2003 and apparently bogged down ever since, adopt some of the American regulatory provisions, the EU does not intend to adopt the American requirement that, if a food has high levels of total fat, saturated fat, cholesterol, or sodium, any health claim is contraindicated and is therefore misleading (Ford, Hastak, Mitra, and Ringold, 1996). This decision may not be in consumers' best interests.

Consumer nutrition knowledge varies widely; however, knowledge of specific areas such as the link between dietary fat and cholesterol is generally poor (Andrews, Netemeyer, and Burton, 1998). Consumers frequently generalize beyond the specific attribute information provided by the manufacturer. Andrews, Netemeyer, and Burton (1998) argue that activation theory is useful for explaining the ways in which consumers generalize from health-based claims. When a specific health claim is made (such as "low cholesterol"), this tends to activate more general claims that are linked within the memory network (for example, "lowers risk of heart disease"), but not unrelated specific or general health claims. Motivation is a factor in acquiring knowledge, with many consumers reporting a lack of interest in learning enough background information to be able to interpret information such as food labels effectively (Wandel, 1997). Motivation to process advertising information is, unsurprisingly, not high (Obermiller, Spangenberg, and MacLachland, 2005). However, information availability and accessibility are also important; on this basis, we can expect that up to 40 percent of the population

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of most developed countries will lack both nutrition knowledge and the reading ability by which nutrition labels and health claims can be accurately evaluated (Easton, 1999; Teisl, Levy, and Derby, 1999; Wallendorf, 2001).

There has been an increase in preprepared meals and meals eaten outside the home, but low levels of comprehension regarding their nutritional content (Burton and Creyer, 2004). Where labeling is available and consulted, consumers appear to focus primarily on fat content levels on labels, ignoring other factors such as sodium that may have health implications (Keller et al., 1997). It is also known that consumers misinterpret or overgeneralize nutritional health claims (Andrews, Burton, and Netemeyer, 2000; Mitra, Hastak, Ford, and Ringold, 1999). For example, the term "healthy" has been shown to create the expectation, often erroneously, that products displaying the term will be low in sodium, fat, cholesterol, and calories as well as being a source of fiber (Mayer and Scammon, 1993). This is particularly important, given that many so-called "healthy" products contain more fat or calories than standard products (Mortimer, 2002).

Many consumers do not use nutrition information at the point of purchase (Moorman, 1990), behavior attributed by Sadler (1999) as due to difficulties in understanding the information provided. Knowledge of nutritional issues among consumers is somewhat uneven: Garretson and Burton (2000) report higher awareness of links between saturated fat and heart disease,

and dietary fiber and cancer risk, but not of the connection between fat and cancer or dietary fiber and heart disease. There are consequences in terms not only of the provision of information, but also the way the messages are framed and the format in which such information should be presented (Levy, Fein, and Schucker, 1996).

A further aspect that should be considered is health literacy. In the field of health promotion, it is suggested that there are many patients "unable to read and understand directions such as 'avoid taking medication on an empty stomach'" (Foull, Carroll, and Wood, 2001, p. 8). Those with low levels of literacy were five times more likely to misinterpret their prescriptions (Bar-Yam, 2002). There are potentially serious consequences in this, both for themselves and for others, such as children to whom they may be administering medicines. This problem may be particularly severe among older patients; almost 42 percent of older Americans are unable to read the instructions on how to take their medication (Roman, 2004). Drawing the parallel with health and nutrition information, it can be readily assumed that those with literacy problems are likely to struggle with complex advertising claims or nutrition labeling on product packaging.

We now move on to describe the empirical data that were gathered to throw light on the research questions addressed in this project.

RESEARCH METHODS

In the preceding sections we have discussed the significance of nutritional claims

in food advertising, the debate about self-regulation and statutory regulation of nutritional claims, and what is known about the ability of consumers to make sense of health-related claims in advertising. An empirical project was designed to address the following research questions:

- RQ1: What health/nutrition claims are made in mass consumer media and on associated product packaging, in what form, and on behalf of which advertisers?
- RQ2: To what extent will these health/nutrition claims be affected by the statutory regulation that the EU proposes to introduce?

One entire week of free-to-air broadcast commercial British television (three channels—ITV1, Channel 4, and Channel 5) was recorded on DVD, and formed the data set for all subsequent analyses. A detailed record of all food advertising was compiled from the data set, with full transcription of all health-related or nutritional claims. The TV data were captured during the week commencing March 6, 2006, which was considered to be a neutral television week, occurring after the Winter Olympic Games and before the Commonwealth Games—hence advertising schedules were expected to be normal for this week.

All advertisers making any form of health or nutrition-related claim were identified and their claims transcribed. In total 46 of the advertisements made nutrition or health-related claims. Of 46 different advertisers making such claims, 19 in total were for food products. The remainder were cosmetics, toiletries, or over-the-counter medicines.

Once the set of food product advertisements containing health-related or nutritional claims had been identified, a qualitative analysis process using a

formal coding schedule was carried out on this set of advertisements. The qualitative coding schedule was derived from the proposed EU regulatory framework. A guide

to the nature of claims covered by the EU regulatory framework is given in Table 1. Two researchers coded the qualitative data independently (achieving inter-rater reliability

of over 90 percent), and then discussed cases where their coding differed. All coding differences were resolved satisfactorily through discussion.

TABLE 1
EU Regulations: Classification of Claims

Nature of Claim (wording taken from the EU draft regulations)	Coded in Following Tables as:
<p><i>Nutrition content claim</i></p> <p>"Nutrient Claim made for example: low fat, source of calcium" (p. 4, section 11)</p> <p>"'Low fat' claim should only be allowed if the product does not contain high quantities of sugar or salt; or a 'high calcium claim should not be used on a product with a high fat content'" (p. 4, section 13)</p>	NCC
<p><i>Comparative claim</i></p> <p>"'Comparative claim' (e.g., reduced fat, increased calcium)" (p. 4, section 11)</p> <p>Section 24 states: "For comparative claims, such as 'increased' or 'reduced,' one would ask compared to what" (p. 7, section 24)</p>	CC
<p><i>Nutrient function claim</i></p> <p>"Nutrient function claim" (e.g., calcium aids in developing strong bones and teeth) (p. 4, section 11)</p>	NCF
<p><i>Physiological effect</i></p> <p>"Other substances with a nutritional or physiological effect" (e.g., antioxidants, probiotic bacteria) (p. 4, section 12)</p>	PE
<p><i>Potentially misleading nutrient content</i></p> <p>Potentially misleading nutrient content claims, e.g., 90 percent fat free, which is not low fat content ("May be misleading in the way they are expressed, even if they are factually true")—"low fat"/"reduced fat" 90 percent fat free (p. 6, section 18)</p>	MNC
<p><i>Claims not able to be substantiated</i></p> <p>For example, balanced diets or ordinary food cannot supply adequate amounts of all nutrients. Also claims as to the suitability of a food for use in prevention, treatment or cure of a human disease (pp. 3/4)</p>	CNS
<p><i>Claims unlikely to be understood by consumers</i></p> <p>"Truthful but highly specialised claims" unlikely to be understood by consumers, "for example: folate may help normalise plasma homocystine levels" (p. 6, section 18)</p>	CUU
<p><i>General, nonspecific benefits</i></p> <p>"General, non-specific benefits and to general wellbeing. Not only are these claims vague and often meaningless, but they are not verifiable." For example, "excellent for your organism; reinforces the body's resistance: helps your body resist stress, purifies your organism; has a positive effect on your wellbeing, has a harmonising effect on your metabolism, helps keep your body feeling good; preserves youth etc" (p. 6, section 19)</p>	GEN

The highly skeptical consumer will simply refuse to be persuaded, whereas the consumer with high persuasion knowledge can be persuaded if presented with the right evidence.

The second stage of the analysis was to evaluate each health-related or nutritional claim on the basis of the guidelines and directions for the proposed EU regulation. The key question here was whether or not such claims would still be permissible after the framework came into force, that is, whether the claims made would be in accordance or in breach of the proposed legislation. Because the legislation has not yet been passed, there may be some changes to it before the regulation becomes law. However, the researchers used the strictest possible interpretation of the proposed regulation to assess each claim. The same protocols were used as in the preceding analysis, that is, independent coding by two researchers with subsequent discussion to resolve any differences in coding.

In addition to the claims being made in the television advertisements, the researchers also checked the product packaging for any related claims. Although the packaging is beyond the scope of the proposed EU regulation, the packaging is an integral part of the communication process with consumers. In fact, it may be stated that claims being made on packaging (and thus at the point of purchase) may be equally, if not more, decisive for consumer purchase decisions.

RESEARCH FINDINGS—TYPES OF CLAIM MADE

In total, eight advertisements for dairy products, three advertisements for drinks, and eight advertisements for food products were included in this study. A breakdown of the categories is given in Table 2.

The most popular nature of claims was claims from the nutritional content claims category with 10 of the 19 advertisements making such claims. As previously noted by Andrews, Netemeyer, and Burton (1998), such claims tend to be generalized beyond the stated claim, so a claim that the food is "low in cholesterol" tends to be generalized as a food lowering the risk of heart disease, without the effect being clearly stated. Thus, advertisers could possibly claim factually true information without any direct claim of health benefits, but the consumer is likely to interpret these claims as having a much wider impact—we explained above in our review of the literature that consumers are known to overgeneralize nutritional health claims (Andrews, Burton, and Netemeyer, 2000; Mitra, Hastak, Ford, and Ringold, 1999).

The second most frequently made claims fell into the "nutrient function claims" (five claims), though this number was considerably lower. These kinds of claims are different from the nutritional content claims, as they rely on the advertiser making a direct claim of a health benefit associated with a particular nutrient.

Four advertisements contained comparative claims (for example, reduced fat) and

TABLE 2
Categories of Advertisers Making Implicit or Explicit Health or Nutrition Claims

Categories	Number of Advertisers	Overall Food Advertisers (%)	Number of Claims Made per EU-Defined Categories of Claims							
			NCC	CC	NFC	PE	MNC	CNS	CUU	GEN
Dairy products	8	42.2	4		3	1		1	1	2
Drinks	3	15.8	2							1
Food—sweets/sweet biscuits	2	10.5	2		1					
Food—crisps	2	10.5		2			1	1		
"Healthy" ranges/meat	2	10.5		1						1
Food—cereals	2	10.5	2	1	1					
Total	19	100.0	10	4	5	1	1	2	1	3

three advertisements contained general, nonspecific claims, such as "purifies your body." Two advertisements contained claims not able to be substantiated, at least in the advertising context, though substantiation may well be possible if a complaint against such an advertiser would be made. For each other claim type, one claim was found (physiological effect, potentially misleading nutrient claim, claims unlikely to be understood by the consumer).

RESEARCH FINDINGS—IMPACT OF PROPOSED REGULATION ON CLAIMS

If the proposed regulation came into force, then the majority of claims would remain unaffected by this. Table 3 gives an overview of the claims that we found and the likely impact that the regulation would have. As can be seen from Table 3, all but one claim would likely be still permissible under the new regulations. The major reason for this is that most claims are factually correct nutrition content claims. For example, Muller Vitality does indeed contain Omega-3 fatty acids. Thus the claim is factually correct, and no other direct claims are being made (including no claims about the effects of either the product or Omega-3). The product contains 12.4 g of sugar, which would be considered relatively high, while containing only 1.7 percent of fat and only a trace of sodium. The product would still be allowed to make nutrient content claims.

All of the foods with nutrient function claims that we identified would also probably be allowed to continue making these claims under the proposed EU regulations, because they are mostly based on fairly broad, and generally well-understood scientific principles. For example, the claim by Yoplait that calcium helps children to build strong bones is both scientifically sound as well as widely acknowledged; in fact, it is one of the claims authorized by the FDA in the United States.

As "Petit Filou" is both low in fat (2.3 g/100 g) and sodium (0.042 g/100 g), the nutrient content claim would again be permissible, despite the product having 12.3 g of sugar per 100 g.

Equally, some foods that are arguably unhealthy, such as crisps (potato chips), will be able to continue their nutritional advertising claims. Here the industry has either opted for a claim type not strictly covered by the regulation (percent of recommended daily allowance) or is advertising using comparative claims (for example, 70 percent reduction of a nutrient). A claim that each packet of Walker's crisps contains 5 percent of the recommended daily intake of saturated fat is correct and so is the comparison of the product with a standard chocolate digestive biscuit (cookie). The advertisement makes no direct claims that the product is healthy; in fact, it could be argued that the advertisement contains nothing more than overt nutritional information. Of course, regulators have repeatedly asked for clearer nutritional information.

The only advertisement that we identified that would probably not be able to make any health claims under the proposed EU regulation is the advertisement for the ASDA "Great Stuff" ready meal range. The problem with this advertisement is that the claim for a range of products to be "healthy" is simply too vague. ASDA themselves claim at their website that this product range has been developed by nutritionists to be a part of a healthy, balanced diet.

Potentially confusing claims will probably still be permissible. For example, the British Advertising Standards Authority (ASA) received various complaints about the advertisements for Walkers Crisps mentioned above. The complaints were made on the basis that the advertisements were confusing to consumers. Yet at the

time of writing, the ASA is understood to have rejected all the complaints because the nutritional information in the advertisements is not misleading or confusing and all claims are substantiated. It is not likely that any proposed regulation would change such a ruling in the future. In fact, given that Walkers crisps (Barbecue flavor) are fairly low in sodium (0.5 g/100 g) and low in sugar (3 g/100 g), it would even be conceivable that despite the 33.0 g of fat per 100 g the crisps could make nutrient content claims under the new regulations.

CONCLUSION, LIMITATIONS, AND IMPLICATIONS

The memorandum to the proposed EU regulation sets out a number of aims for the regulatory framework to achieve. On the one hand, the regulation should curb potentially misleading or confusing claims, while allowing some limited and well-defined health claims (CEC, 2003, p. 2). However, based on the empirical findings reported in this article, the regulation is unlikely to achieve these aims.

In fact, with the new regulation in force, little is likely to change in terms of the claims currently being made. This is mainly because most advertisers rely on nutrition content claims or comparative claims, thus avoiding the potential pitfalls associated with other claims. Nutrition content and comparative claims are fairly easy to substantiate; in the case of nutrition content claims, they generally do not make any direct health claim. An implied or perceived health claim may still be made, and the regulations would be unlikely to stop such claims being made.

In fact, it appears that advertisers on British television today are already largely operating by the new regulations. All but one of the advertisements that we analyzed seemed to conform already to the regulation. If the argument is that current

TABLE 3

Advertiser and Claim Made—Beverage—Milk/Soya

Category	Product	Brand	Advertiser	Claim	Claim Permissible under New Regs?
Dairy products	Milk	Growing Up Milk	Cow & Gate	By introducing Growing Up Milk, it's full of Cow & Gate's expertise as well as essential goodies like vitamins and iron to help your growing toddler. (voice)	Yes
	Formula for babies	SMA Progress	SMA Nutrition	"Progress is a follow-on milk. Not intended to replace breast feeding." (text)	Yes
	Soya milk	Alpro Soya	Alpro	"New low-fat sugar-free Alpro Soya light" (voice)	Yes
	Pro-biotic drink	Actimel	Danone	"An essential part of your natural defenses are the good bacteria in your gut. Actimel can help top up your good bacteria—this makes life harder for the bad bacteria." (voice)	Yes
	Mini pro-biotic drink	Flora Pro-Activ	Unilever	"To maintain a healthy heart Flora Pro-activ have a new mini drink that contains active dairy peptides proven to help control blood pressure." (voice and text) "As part of a healthy lifestyle" (text)	Yes
	Yoghurt	Müller Corner	Müller	"There are now even more delicious flavors to choose from with our Healthy Balance range" (voice)	Yes
	Pro-biotic drink	Müller Vitality	Müller	"Throughout the day Müller Vitality now with the added benefit of Omega 3" (voice)	Yes
	Yoghurt for kids	Petit Filous	Yoplait	"Petit Filous yogurt drinks contain calcium to help kids grow strong bones." (voice)	Yes
Other drinks	Fruit drink	Vie	Knorr	"Helps you on your way to five a day." (voice)	Yes
	Juice drink	PJ Smoothies	PJ Smoothies	"PJ Smoothies—100 percent pure fruit blended in a bottle" (voice)	Yes
	Soft drink	Pepsi	PepsiCo, Inc	"Pepsi Max—no sugar" (voice and text)	Yes

(continued)

TABLE 3 (cont'd)

Category	Product	Brand	Advertiser	Claim	Claim Permissible under New Regs?
Sweets	Lollipops	Chupa Chups	Chupa Chups SA	"Cremosa is sugar free. Kids love it as it tastes as creamy as an ice cream and because it contains a sugar substitute that doesn't upset the mouth's pH; it doesn't cause dental cavities." (voice) Predental, sugar free (text)	Yes
	Wafer cookie	Happy Hippo	Kinder	"Happy Hippos with light wafer and no artificial preservatives or colorings" (voice)	Yes
Snack foods	Crisps	Walkers	Walkers Snack Foods Ltd	"There's loads of saturated fat in a bag of Walkers crisps isn't it? What do you reckon? 95 percent of your guideline daily amount? Well, the truth is there's only 5 percent." (voice) "Based on a standard bag. Excludes Walkers Snacks." (text)	Yes
	Crisps	Walkers	Walkers Snack Foods Ltd	"A bag of Walkers crisps now contains just 8 percent of your daily salt amount." (voice) "Based on a standard bag. Excludes Salt & Vinegar, Pickled Onion and Walkers Snacks" (text)	Yes
	Crisps	Walkers	Walkers Snack Foods Ltd	"Walkers have reduced the saturated fat in their crisps. They've squeezed it down by 70 percent, but the taste is just as massive as ever." (voice) "Excludes Walkers Snacks" (text)	Yes
	Crisps	Hula Hoops	United Biscuits	"Now with 50 percent less saturated fat, but still the same great taste" (voice)	Yes
Ready meals	Ready meals	ASDA Great Stuff	ASDA	"New Great Stuff from ASDA—healthier stuff like tuna pasta spirals with no artificial colors or preservatives" (voice) "The healthier stuff kids love" (text)	X No
	Turkey breast meat	Bernard Matthews	Bernard Matthews Ltd	"2 percent fat is all it contains, so stir in plenty" (voice)	Yes

(continued)

TABLE 3 (cont'd)

Category	Product	Brand	Advertiser	Claim	Claim Permissible under New Regs?
Cereals	Cereals—variety	Nestlé cereals	Nestlé	<p>"The green strip means that in the cereal there is whole grain" (voice)</p> <p>"It's just an easy way of getting whole grain into the diet." (voice)</p> <p>"Not all cereals have whole grain but every Nestlé cereal has whole grain—guaranteed. Just look for the green banner." (text and voice)</p> <p>"Nestlé Cereals—whole grain guaranteed" (voice and text)</p>	Yes
	Breakfast cereal	Shreddies	Nestlé	<p>"Packed with whole grain Shreddies is school fuel, it's starter fuel, it's focused fuel, it's rocket fuel." (voice and text)</p> <p>"A good breakfast like whole grains Shreddies helps kids stay focused, engaged and enthusiastic." (voice)</p> <p>"Studies of Shreddies versus a glucose drink" (text)</p>	Yes

advertising is confusing or misleading, then the regulation will do little to change that. Paradoxically it may actually do the reverse, because the one advertisement that was likely to be banned under the new regulation is for a group of products that could at least potentially deliver real benefits to the consumer. In short, this looks very much like a paradigm case for Seldon's (2004) argument that the political process is singularly unable to correct a failure of the market process.

Yet why would the regulation fail to curb claims being made? The crucial point is the rewording of article 4 of the proposed regulation. As the article now permits nutrient content claims to be made for products where "a single nutrient exceeds the nutrient profile" (European Parliament, 2006), the regulation basically allows for claims being made for a range of fairly unhealthy foods. For example, high fat foods such as crisps (potato chips)

or high sugar foods such as sweets (candies) can still make nutrient claims under this rule. The provision makes no rules for advertising claims, and the only condition it makes is that the packaging should state that the food is high in a particular nutrient. This could ironically lead to a claim such as "Low in saturated fats—high content of fat" being made. Almost certainly a wording like that would be highly confusing for most consumers.

There are clear limitations to the empirical study that we have reported here, because it is based on the advertisements from only one week's broadcast commercial television output in one member country of the EU. Nevertheless, there are interesting implications both for regulatory policymakers and for marketing practitioners. In the process of negotiating the precise details of the proposed EU regulatory framework, the intentions behind

the regulatory initiative seem to have been undermined. There is little reason to suppose that the new regulations will help to reduce the degree of confusion felt by consumers. Indeed, there seems to be little reason to expect the new regulations to affect the communications strategies of European advertisers very much at all. We are unable to tell from our research why it is that the impact of the proposed regulations will be so limited. One can speculate that it may be the result of a process of industry lobbying to ensure that the regulatory framework is not excessively burdensome on advertisers, or it could simply be excellent foresight and planning on the part of the advertisers who have adjusted their behavior in anticipation of the new regulations. These are research questions that could only be addressed through further research, employing different methods to those that we have used in this article.

As we discussed in our review of the literature, it is known that people's persuasion knowledge develops through time, and that it is very probably culturally contingent (Friestad and Wright, 1994). Clearly, therefore, the study that we have conducted on U.K. commercial television advertising could, and should, be replicated in other EU member countries; it should also be replicated in the United Kingdom periodically in the future. In addition, and ideally in parallel, consumer studies focusing on consumers' level of comprehension and belief in the nutritional and health-related claims made in food advertising would contribute to policy-making, marketing practice, and to marketing theory by augmenting our understanding of consumer persuasion knowledge and consumer skepticism. 

ROSS BRENNAN (Ph.D., University of Manchester) is a reader in marketing at Middlesex University Business School, specializing in business-to-business marketing and marketing strategy. Dr. Brennan has professional experience of marketing and strategic management in the telecommunications industry. His work has previously been published in such journals as the *Journal of Business Research*, the *European Journal of Marketing*, *Industrial Marketing Management*, and the *Journal of Marketing Management*.

BARBARA CZARNECKA is a Ph.D. student in marketing at Middlesex University.

STEPHAN DAHL (Ph.D., University of Luton) is a principal lecturer in marketing at Middlesex University Business School, specializing in marketing communications and intercultural communications. Dr. Dahl has professional experience in the broadcasting industry. His work has been presented at several international conferences and colloquia on marketing and intercultural communications.

LYNNE EAGLE (PhD, University of Auckland) is a professor of marketing at the University of the West of En-

gland, specializing in marketing communications, consumer behavior, and social marketing. Dr. Eagle has professional experience in the advertising industry. Her work has previously been published in such journals as the *Journal of Marketing Communications*, the *Journal of Marketing Management*, the *International Journal of Medical Marketing*, and the *European Journal of Marketing*.

OLGA MOUROUTI (Ph.D., University of Hertfordshire) is a senior lecturer in marketing at Middlesex University Business School, specializing in strategic management and retail management. Dr. Mourouti has professional experience in the retail sector. Her work has been presented at several international conferences and colloquia on marketing and strategic management.

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