

The Milkybar 'Kid': Nestlé, childhood obesity and the regulation of advertising of high sugar and fat ultra-processed products

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Key points

Suggests that Advertising Standards Authority and Food Standards Scotland play a limited role in consumer protection and information, although we believe that such regulatory bodies remain important avenues to exert influence on producers of ultra-processed foods.
Suggests the ultra-processed food industry

continues to get away with misleading and child-targeted advertising, whilst the regulatory authorities themselves admit the 'frustration' that could result from the patchy impact of voluntary industry codes of practice on food labelling.
Proposes that pressure on both manufacturers and regulatory authorities could usefully come from

dental professionals and their patients, alongside support for new legislative measures to reduce the promotion and consumption of ultra-processed foods.

We report a case of public health activism which began as a formal complaint lodged with the Advertising Standards Authority (ASA) on 24 June 2017 against Nestlé, a major global ultra-processed food manufacturer. A television advertisement for Nestlé's Milkybar included the copy '*It's the simple things that are the most fun. That's why milk is now our No. 1 ingredient*'. However, the main nutritional constituent in Milkybar is sugar at 53%, and therefore we complained to the ASA that the advert was misleading. The ASA rejected the complaint, referring to the manufacturer's claim that milk, at 37%, was the biggest ingredient, rather than constituent, and therefore the advert was not misleading. We countered that the largest ingredient was not milk, but milk powder, a processed food, the lactose from which contributes to the 53% free sugars in the product. This argument was also rejected by the ASA, as were later complaints to Food Standards Scotland (FSS) regarding Nestlé's failure to provide front of pack colour coded nutritional information despite their being party to a voluntary agreement to do so in 2013. An enquiry to Nestlé was met by a response citing the voluntary nature of the nutritional information agreement, and lack of space on packs. A final email to Nestlé claiming a breach of their corporate business principles was rejected. We conclude that the ASA's decision not to investigate our case fully represents a failure to protect the public from misleading advertising, undermining the ASA's own role and campaign to regulate advertising that may contribute to childhood obesity and dental caries. FSS appears relaxed about Nestlé's lack of compliance with the nutritional information agreement. Despite this experience, we recommend that complaints to regulatory bodies such as the ASA and FSS continue, if only to expose the weakness of current regulations.

Introduction

In the UK and elsewhere across the developed world, a relatively small group of health conditions (the noncommunicable diseases [NCDs]) now cause a large part of the overall disease burden. The major NCDs (diabetes, cardiovascular diseases, cancer, chronic respiratory diseases and mental disorders) account for an estimated 86% of deaths and 77% of the disease

burden in Europe.¹ In response to these threats, The World Health Organisation (WHO) NCD global action plan 2013–2020 proposes to address four NCD risk factors: physical inactivity, alcohol, unhealthy diet and tobacco.

The first three of these risk factors are known to contribute directly to the current epidemic of obesity in the UK and elsewhere. In England, 58% of women and 65% of men are reported to be overweight or obese.² This situation is unlikely to improve in the short term as the percentage of overweight or obese boys is fifteenth highest (26%) and for girls is fourth highest (29%) among the 34 Organisation for Economic Co-operation and Development (OECD) countries.³ In Scotland, 22% of 5-year-old schoolchildren are overweight or obese.⁴

As well as being implicated in obesity and overweight, the high consumption of sugar also increases the risk of diabetes and dental caries.⁵ The more sugar consumed by individuals, and the more frequently they do so, the more likely they are to suffer from tooth decay.⁶ Newly erupted permanent molars, which emerge at roughly five and twelve years of age, are particularly vulnerable, as the process of tooth enamel maturation is incomplete at this time.⁷ In 2015/16 almost a third (31%) of children entering primary school in Scotland already had experience of tooth decay.⁸

Producing and retailing processed food and drink (sometimes described as ultra-processed products [Box 1]), is big business, with substantial profits generated by international

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conglomerates. Along with tobacco and alcohol, these business interests have been termed ‘unhealthy commodity industries,’ producing health harming products specifically designed to be ingested.

Sugar is highly palatable, and changes in the supply and manufacture of food over the last few decades have increased the availability and affordability of high sugar foods and drinks.¹⁰ As a result, the average Scottish diet now contains three times the recommended sugar intake of 5% of total energy consumption.¹¹ Among 5–6-year-old children, a recent study in the English Midlands¹² found that average sugar consumption was 75 g per day, compared with an NHS recommendation of 19 g.¹³

Sugar-sweetened manufactured products such as confectionery are immensely profitable. Their manufacture is cheap and the high sugar content gives a long shelf life. The prime duty of the private ultra-processed food industry is to maximise profits for shareholder return. The processed food industry has appeared slow to adopt product labelling such as the display of colour coded ‘traffic lights’ indicating fat, sugar and salt content (Fig. 1).¹⁴ These delaying tactics were first seen in the tobacco industry, hence the suggestion that ‘sugar is the new tobacco’.¹⁵

The role of advertising and the UK Advertising Standards Authority

Asymmetric information, sometimes referred to as information failure, is present whenever one party to an economic transaction (for example, buying foodstuffs) possesses greater material knowledge than the other party. Advertising is supposed to provide information to buyers (knowledge of the market), but the information asymmetry is maintained or exacerbated by misleading advertising. To combat this market failure the Advertising Standards Authority (ASA) was established to prevent false information from being presented. The ASA works to the UK Code of Broadcast Advertising. The ASA website states: ‘The ASA will take into account the impression created by advertisements as well as specific claims. It will rule on the basis of the likely effect on consumers, not the advertiser’s intentions’.¹⁶

In the same document, paragraph 3.2 states: ‘Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.’

Box 1 Ultra-processed products⁹

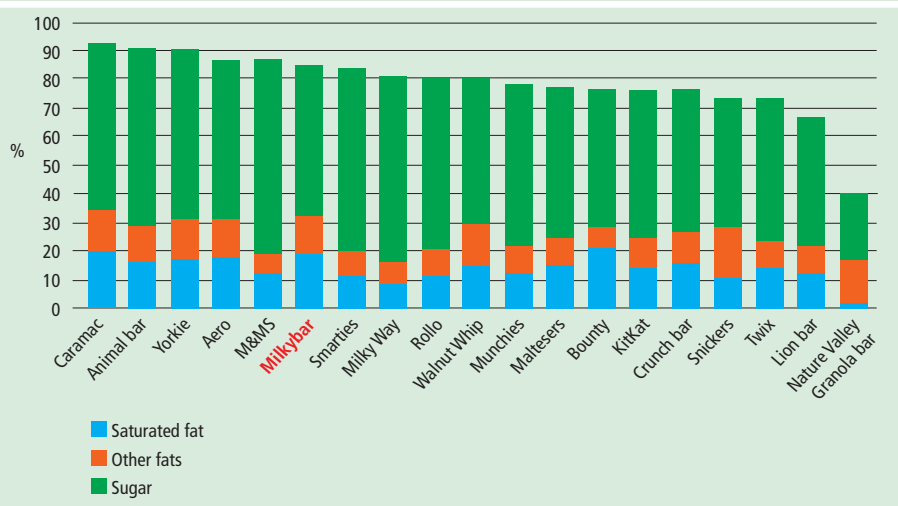
Ultra-processed products are made from substances extracted or refined from whole foods—e.g., oils, hydrogenated oils and fats, flours and starches, variants of sugar, and cheap parts or remnants of animal foods—with little or no whole foods. Products include burgers, frozen pizza and pasta dishes, nuggets and sticks, crisps, biscuits, confectionery, cereal bars, carbonated and other sugar sweetened drinks, and various snack products.

Ultra-processed products are typically energy dense; have a high glycaemic load; are low in dietary fibre, micronutrients, and phytochemicals; and are high in unhealthy types of dietary fat, free sugars, and sodium. Most are made, advertised, and sold by large or transnational corporations and are very durable, palatable, and ready to consume, which is an enormous commercial advantage over fresh and perishable whole or minimally processed foods.

When consumed in small amounts and with other healthy sources of calories, ultra-processed products are harmless; however, intense palatability (achieved by high content of fat, sugar, salt, and cosmetic and other additives), omnipresence, and sophisticated and aggressive marketing strategies (such as reduced price for super-size servings), all make modest consumption of ultra-processed products unlikely and displacement of fresh or minimally processed foods, which generally have less fat, sugar, and salt, very likely.

These factors also make ultra-processed products liable to harm endogenous satiety mechanisms and so promote energy overconsumption and therefore obesity and concomitant conditions.

Fig. 1 UK confectionery: % sugar, saturated and other fats, 2017. Data source: Tesco website search – <https://www.tesco.com/groceries/en-GB/search?query=chocolate>



Case report

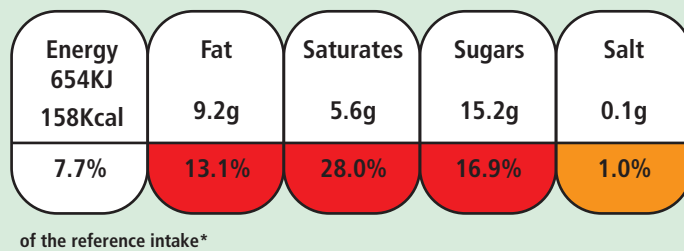
Nestlé, a major ultra-processed food manufacturer, and the world’s fourth largest manufacturer of confectionery, claims to operate under a framework of corporate business principles.¹⁷ The third of these covers consumer communication, and includes the following statement (our highlighting):

‘We are committed to responsible, reliable consumer communication that empowers consumers to exercise their right to informed choice and **promotes healthier diets** [...] Our core business strategy is built around helping consumers to have a **balanced, healthier diet**. The Nestlé Consumer Communication Principles contain mandatory rules on marketing communication to all consumers,

including accurate representation and portrayal of foods in a way that **does not encourage over-consumption**. In addition, specific principles guide our communication to children including **no advertising or marketing activity to children under 6 years of age**. Advertising to children from 6 to 12 years is restricted to products that meet predetermined nutritional profiling criteria, including clear limits on energy and health-sensitive ingredients such as **sugars, salt, saturated fat and trans fatty acids**. Our children’s communication principles are specifically aimed at protecting children by ensuring that the advertising is not misleading’.¹⁷

In May 2017 Nestlé launched a £4 million TV, outdoor and social media advertising campaign for the newly re-formulated

Fig. 2 Milkybar buttons nutritional values per 30 g bag



Milkybar, a white chocolate aimed at children. The TV ad shows two primary school age children at home with their mother, playing with balloons and each eating what appear to be 30 g bags of Milkybar buttons. (This in itself contravenes Nestlé's own nutritional guidance, which suggests that one 30g bag contains two [adult] portions.)¹⁸ The voice-over on the ad states

'It's the simple things that are the best fun. That's why in every piece of Milkybar chocolate, milk is now our No.1 ingredient' (<https://www.youtube.com/watch?v=wCv5-i50hdo>).

However the 'simple' milk used to manufacture Milkybar is a mix of whole and semi-skimmed milk powder, which contributes to the 'free sugars' making up 53% of the product by weight.

One author lodged a complaint with the UK ASA alleging misleading advertising by Nestlé.

The response from the ASA, sent on 3 July 2017, was disappointing.

'I understand from your complaint that you consider that the ad is misleading because it suggests that the number one ingredient is milk in the Milkybar as opposed to sugar. We have assessed the ad and we will not be taking further action.

The ASA decision. While we appreciate your concerns, we note that the nutritional information is different to the information about ingredients. The nutritional information does not have a category for milk at all as it only accounts for the average amount of energy in the food for example, protein, fat, saturated fat, carbohydrate, sugars and sodium (a component of salt).

The ingredients on the other hand are listed in order of quantity with the highest at the top. Milk is first in the list at 37.5% of the bar followed by sugar, which supports that it is the "number 1" or highest quantity ingredient in the bar [...]. We note that the ad does not make any health claims but is merely making the factual claim that the primary ingredient in their product is milk. For this reason, the ad does not break the rules.'

We responded on 5 July.

'I remain convinced the ad is misleading, for the following reasons. Despite the manufacturer's claim, the ingredients include not milk but powdered whole and skimmed milk, both of which contain lactose, a form of sugar. Specifically, semi skimmed milk in liquid form has 4.7 g of lactose per 100 ml (100 ml of milk weighs about 103 g). So liquid milk has a relatively low level of sugar content. However, skimmed or whole milk powder has lactose at 49.5%–52.0% – at least ten times as high as in liquid milk.

If Nestlé's claim that milk is the number 1 ingredient were true, it would mean ten times less sugar would be introduced than is the case with the actual ingredient – milk powder [...] therefore the emphasis on milk, a natural product (note the ad's emphasis on simple ingredients, shown by liquid milk being poured into a button shape), rather than processed milk powder with a much higher sugar content, is misleading. And of course the end result is that sugar in various forms is the greatest single contributor (53%) to the nutritional content of the product. This is about the same as most confectionery[...]. The information on the Milkybar wrapper notes that a 30 gm bag of buttons (the two primary school age children have a bag each) gives 16% of an adult's recommended daily sugar intake, but does not attempt to estimate this for children, the clear target of the ad. I would estimate that a bag represents one third to one half of a child's recommended daily sugar intake.'

The ASA did not make a specific response to this second email, but on 14 August we received a request for routine feedback on their performance via a polling organisation online questionnaire. So we fed back.

'The ASA's decision not to uphold my complaint regarding Nestlé's Milkybar seems to hinge on a pedantic distinction between ingredients and contents. Milk is the "number

1 ingredient", as heavily stressed in the advertising, yet does not feature in the list of nutritional contents (where sugars are shown to represent 53%). The 'milk' ingredient in the bar is actually milk powder, which makes me wonder whether in fact water should be listed as the number 1 ingredient. The advertising stresses milk as "simple", with the suggestion that it is natural and therefore healthy, which the ASA failed to pick up. I conclude that it must be relatively easy to keep within the ASA's requirements and yet at the same time mislead the public, in this case families tempted to buy their children a "simple" treat which it is true is simple, it's just that it's simply mostly sugar. It's the Milkybar kid!'

On 21 August we again wrote to the ASA, this time focusing on the nutritional guidelines:

'I am writing to correct my previous email of 5 July. I have since discovered that the NHS recommended daily sugar limit for four- to six-year-olds (roughly the age of the children in the Milkybar ad) is 19 g. They are each shown consuming a 30 g bag, which will give them, I calculate, 84% of their NHS daily recommended limit of free sugars. This sugar level is partly derived from the milk solids ingredient in Milkybar, which Nestlé (and the ASA) seem to assume is nutritionally the same as milk, but which any dietician will tell you is not.

We remain convinced that the ad is misleading regarding both the No.1 ingredient (milk solids, not milk) and its failure to warn parents of the large percentage of a child's reference intake of free sugars which the product represents.'

The ASA responded:

'While we appreciate your concerns, there is no requirement for a warning to be shown on ads with regards to where the sugar is derived from; whether this is liquid milk or powdered milk. In addition to this, we do not investigate food labels as the Code does not apply to packaging, wrappers or labels and therefore we do not propose to take any further action based on the reasons you have provided.'

Nutritional information

As the 'simple stuff' campaign finished in September 2017, we focused on Nestlé's poor performance in providing nutritional information on confectionery, despite their commitment in 2013 to do so.¹⁹ The nutrient profiling model developed by the Food Standards Agency (FSA)²⁰ results in a score of 31 points out of a possible 40 for Milkybar (high scores indicating

high fat, sugar and/or salt content), compared, for example, with scores of 30 for Mars Bar and 13 for Nature Valley crunchy peanut butter cereal bar, manufactured by Nestlé's partner, General Mills. This guidance is currently under review by Public Health England.

We contacted Food Standards Scotland as the regulatory authority responsible for promoting front of pack nutritional information in Scotland. We also contacted Nestlé Customer Services regarding the lack of colour coded nutritional information on their packs.

The FSS replied on 4 September, suggesting that non-use of front of pack information was due to lack of space on small packets.²¹ We responded with a full size mock-up of a 25 g Milkybar pack bearing 'traffic lights', demonstrating that the lack of space argument was unfounded.

Given that the children in the ad each appear to be consuming a 30 g bag of buttons, we calculated what such a quantity would mean in terms of the percentage of the reference intake for an adult (2,000 calories per day: see Figure 2).

Of course the percentages figures shown in Figure 2 would be much higher using a child's reference intake. In the case of sugar, one bag would provide over 80% of the 19 g reference intake.²¹

The FSS did not respond specifically to this, but acknowledged that there were 'varying levels of uptake and use of Front of Pack labelling since its launch' and this could lead to 'frustration'.

Nestlé UK Customer Services responded on 29 September:

'Nutrition information is provided on a voluntary basis, except where we make a claim such as low fat or high fibre. However, when we do provide the data we must do so in accordance with the European Community Nutrition Labelling Directive. This dictates that we must provide the information on a per 100 g basis. In addition we have the option to provide information per serve, but this can result in great pressure on label space. This is also the reason we do not include the Vegetarian symbol on our labels at present.'

On 6 November we lodged the following comment on the Nestlé website via their 'Report your concerns' facility. (<http://www.nestle.co.uk/aboutus/report-your-concerns#>).

'My concern is with the lack of progress in placing "traffic light" nutritional guidance on confectionery packets. I realise this information takes up a little more room than the single "percentage of an adult's recommended calorie intake" figure. However, there is enough room

even in most individual packs to place this information on the front of the pack, as you agreed to do in 2013. For example, I've attached a mock-up of a 25 g Milkybar. It seems to me that the font conforms to the EU size requirement. A good service to your customers would be to present similar information at the end of your TV ads. I believe that this would show a clear commitment to better and simpler consumer information, and would reflect well on your company's ethical actions. This is particularly relevant in cases such as this where children are the main consumers, given the serious problems of childhood obesity and poor dental health that we are experiencing worldwide.'

On 28 November Nestlé responded:

'Nestlé UK adopted the UK Government's recommended front of pack colour coded nutrition labelling scheme in 2013 as part of our long standing commitment to provide consumers with nutrition information on front of pack since 2005 to make it easier to make informed choices. The announcement in 2013 covered Nestlé UK fully owned businesses. We are pleased that in September this year, our Joint Venture with General Mills, Cereal Partners Worldwide, announced that it will adopt the UK Government's colour-coded labelling on all Nestlé Breakfast Cereals sold in the UK by early 2018.'

In line with EU regulation and Department of Health Guidance on the colour coded labelling scheme, small packs or products with limited label space due to their pack shape can use the energy lozenge rather than the full five lozenges. We include all five lozenges on our confectionery wherever it is practical to do so including on our multipacks, sharing bags and blocks, however, some of our smaller packs have only got the energy lozenge as you noted. The packs used in our UK TV commercials are a true representation of our packs and display the nutrition labelling as on pack.

We continuously reassess our labelling and packaging to ensure it provides the best consumer experience, and are grateful for consumer feedback. I will pass your suggestions on to the teams, and thank you for your comment and recommendation.'

Conclusion

Notwithstanding the development of advertising and consumer information codes and agreements, we believe that our experience regarding the UK regulatory authorities' and the manufacturer's response in this case

reflects a weak and ineffective commitment to combating childhood obesity and poor diet.

The Milkybar advert directly targets young children and their parents and carers to promote this ultra-processed high sugar and fat containing product. It ignores NHS advice that such sugar consumption should be restricted to mealtimes, and instead stresses the 'fun' to be derived from the 'simple' nature of its contents, particularly regarding the 'milk' content. In accepting such an advert, the ASA fails to follow their own principles (section 3.2, quoted earlier) which states that advertisements must not mislead consumers by presenting material information in an unclear, unintelligible (or) ambiguous manner. In this respect the ASA reflects the actions of Nestlé in their disregard of their own published principles, which prohibits the aiming of confectionery advertising to young children.

We suggest the following measures to strengthen consumer information and advertising regulation in this field:

- A move from voluntary to mandatory regulation, as was (finally) the case in the tobacco and alcohol industries. UK governments already have powers to ensure manufacturers print colour-coded nutritional guidance on the front of their products
- Make colour coded nutritional information mandatory on all TV and press advertising of processed food
- Ban all advertising and in-store promotion of child-targeted high sugar and fat products, whether confectionery, drinks or cereals.²²

Such moves would support wider policies to combat sugar consumption and the related health risks. These could include the extension of the tax on high sugar drinks to high sugar food products, as the British Dental Association has been calling for since 2013.²³

Conflict of interest

Colwyn Jones reports he is a member of the British Dental Association, the European Association of Dental Public Health, the British Association for the Study of Community Dentistry and Obesity Action Scotland. Stephen Turner reports no conflicts of interest.

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