

FAU 2004 CONFERENCE

THE FRENCH SOLUTION

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THE DEBATE: a slippery slope towards a law

- ❑ **Debate in France:**
 - **Same type, same time as UK, Ireland, Sweden, EU**

- ❑ **Specific characteristics: more political pressure than consumer/NGO pressure**
 - **Government (liberal!) started warning, waving potential legislation**
 - **Parliament (both sides) also threatened**

 - **Industry took initiative: self regulation in action**

A NEW CODE OF CONDUCT FOR FOOD ADVERTISING

- ❑ **French industry already had a Self regulatory Code on Children and Advertising. Went much further in 2003 and reinforced it, with new provisions on health and nutrition, that dealt with:**
 - **Encouragement to excessive consumption**
 - **Snacking**
 - **Reference to parents**
 - **Nutritional equivalence**
- ❑ **Added again, in 2004, rules on**
 - **Messages without children presence but with a « children universe »**
 - **Family table scenes where a balanced diet had to be respected**

AN AUDACIOUS CODE

- ❑ **Rarely self-regulatory approaches went so far and so quick on a hot issue**

- ❑ **Deeply changed rules and even was the « demise » of spectacularly popular spots, for big brands from main advertisers**
 - **Examples**
 - **Maurice Nestle**
 - **Danette Danone**

REACTION

❑ Positive first:

- **Commerce and Consumer affairs minister, who had previously envisaged a law regulating advertising to children, welcomed the new BVP Code, saying, "It is more effective than legislation". He added that BVP's initiative "is the first of this kind in Europe" and "takes awareness of the development of childhood obesity in France".**

❑ But attacks came from two convergent groups: Parliament (both parties) and Health ministry, who took the lead in government.

- **Parliament: the Senate wished to regulate labelling and TV advertising for sugar products**
- **Government: Health ministry arm was Health Agency, led by medical staff with a « vision » and a « mission », and no consideration to the industry**

The official project

□ Wanted to go very far on 4 points:

- Dramatically change labelling,
- Ban ads around Children programmes on TV
- Mandatory health message on ads
- Levy system to fund public campaigns on nutrition and health

« Dialogue » but one-way system

- ❑ **A formal dialogue was opened, but no one listened to the other:**
 - **Health ministry services went on on a very tough position. Minister finally gave approval.**
 - **Parliament went on with amendments. Initially not accepted but pressure went on, in both houses (Assembly and Senate).**
 - **Industry, though initially united, could not really be heard**
 - **Self Regulation, after initial interest, was felt too weak and ineffective**
- ❑ **Finally, government accepted the principle of legislative measures and was open to Parliament proposals (through amendments)**

The general concept

- ❑ **The general concept is organised in 3 main ideas:**
 - **Ads for food and drinks on Tv and radio must carry health messages**
 - **Advertisers who do not want such a message will pay a « contribution », a 1.5% levy.**
 - **This will fund nutritional campaigns by public national agency (INPES)**

THE LAW

- ❑ **« Television or radio advertisements for drinks with sugar, salt or sweeteners additives and for manufactured foodstuffs, broadcast from the French territory and received on this territory, must contain a health information message. The same information is also mandatory for promotional operations for of these drinks and products. »**

- ❑ **Comments:**
 - **Drinks: rather clear definition (sugar, salt or sweeteners)**
 - **Foodstuff: « manufactured » i.e. vegetables, meat and fish without preparation are out**
 - **Print advertising is out of the scope**
 - **Advertising AND promotional operations, which has a large definition (incl. Outdoor and Internet)**

What message?

- ❑ **Law says « health information » but no more detail. Will be defined by specific regulation.**
- ❑ **More an information than a « message ».**
 - **But parliamentary debate shows that the idea behind is more than information on the contents of the product. Should tend to advise on diet and nutritional principle.**

The levy

- ❑ **Advertisers can escape this « info » obligation by paying a 1.5% levy**
- ❑ **For the record: this has been the hottest part of debate.**
 - **Initial text (agreed by MPs and Health ministry) was, until the very day before final decision, 5%.**
 - **The Prime minister himself decide to reduce to 1.5% when it appeared that 5 was so high that no advertiser would take that route, thus depriving government from a communication resource for future nutritional education campaigns.**
- ❑ **The 1.5 % is on annual advertising expenditure. No detail on how it is collected.**

Public campaigns funded by the levy

- ❑ **Still obscure. Will be run by Public Health Info Agency.**
- ❑ **With « prior advice » from the advertisers**
- ❑ **The whole system to be defined by future regulation (decrees) after « advisory consultation » of the French SRO (BVP).**
 - **N.b. Complete mystery on the reason why and modalities of this consultation.**

FIRST EVALUATION

- ❑ **Many actors feel they achieved a good compromise:**
 - **Parliament and Health ministry get credit for action on a major issue**
 - **No ban: industry in general, including broadcasters, is relieved**
 - **Advertisers have escaped a much more coercive framework**
 - **Agencies save their business and will be involved somehow in the future public campaigns**
 - **And the public will be aware/informed on the health-food issue**
- ❑ **So, is it a positive solution?**

FIRST EVALUATION: Road to hell?

- ❑ **Maybe not ..Rather « Road to Hell paved with good intentions »**
- ❑ **This levy is nothing but a tax and advertising, here, is supporting a tax-**
 - **i.e. Money diverted from its primary economic objective (sell a product), by legal obligation, to another purpose. Even if this purpose is a noble cause.**
- ❑ **Is the system workable? No details yet available but very likely, the whole idea is very complicated to implement: the message, the levy, the future campaigns are just concepts, not realities.**
- ❑ **Could turn into an administrative, bureaucratic nightmare**

Final judgement

- ❑ **French solution maybe, French example certainly not.**
 - **The industry reaction has been appropriate:**
 - **Anticipation**
 - **United in action**
 - **But finally not very effective.**
 - **Result is just damage limitation (1.5 instead of 5% levy) than real containment of the risk**
 - **Complexity of the system put in place raises many technical questions and cannot serve as a model**

Final judgement

- **Self Regulation unfortunately has shown limits, though well used and well managed.**
 - **But credibility, teeth and effectiveness have been roughly challenged.**
- **It is a pity, because the Code put in place was of real interest and could bring good results. It still can be used elsewhere as appropriate rules for a responsible industry.**

PROTECTION vs RESPONSIBILITY

- **But the main lesson is that, in the French case as it is on many issues, at EU level, when PROTECTION (of health, of children, of the consumer, of the citizen..) becomes the key word of a policy , it becomes very difficult, and maybe impossible, to advocate, as we do, in favour of FREE FLOW and RESPONSIBILITY.**
- **This is a dominant trend and is the main change in our businesses since the turn of the century.**
 - **THE « FRENCH SOLUTION » FOR ADVERTISING FOR FOOD PRODUCTS IS ONE THE MANY EXAMPLES OF THIS NEW POLITICAL BALANCE.**