Moral and Ethical Considerations of Health Claim Regulation in Food Advertising

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Abstract

As American society has become more conscious of the connection between diet and health, the food industry has capitalized on this cultural shift by incorporating an increasing number of health claims into the advertising of its products, while simultaneously designing new functional food products to cater to consumers who are searching for more healthy choices. In this paper, I begin by examining the various types of health claims, how consumers tend to interpret them, and the potential problems and benefits of such claims. I then introduce the universal moral frameworks that are relevant to health claims in food advertising. I also briefly survey the historical efforts of governmental agencies (i.e. the FDA and FTC) to regulate labeling and advertising across the industry, focusing specifically on how effective they have been in enforcing ethical and utilitarian standards in regards to health claims. Finally, I introduce an alternative systems approach from the field of public health that is highly compatible with Mill's utilitarianism, Rawl's veil of ignorance, and Nodding's relational ethics principles. This approach emphasizes a new language of interdependence and care in regards to food advertising, education, and production.

Moral and Ethical Considerations of Health Claim Regulation in Food Advertising

The food industry devotes more dollars towards advertising than any other industry (Hammond, Wylllie, & Casswel, 1999). Television and magazines are the most preferred mediums for food advertisers, beyond the physical packaging that the product is distributed in. Researchers and public health officials often voice concern because the overwhelming majority of advertisements, in both these preferred mediums, are for food products that are high in sugar and fat, and also low in fiber (Hammond, Wyllie, & Caswell, 1999). Furthermore, the industry tends to market these products directly to children, despite their limited ability to critically analyze advertisements at earlier developmental stages (Kaplan, 2009). As a general rule, the more processed or formulated a food product is, the more heavily it is advertised. Such foods are associated with convenience, which many Westerners value within the fast-paced world that they live in (Caswell & Padberg, 1992).

Today, it is widely understood that diet is critical for health, well-being, longevity, and prevention of chronic disease. Diet has been linked to 4 out of 10 of the top causes of death (Mathios & Ippolito, 1999). Scientists and the medical community are also recognizing that diet and physical exercise may be more effective than drugs in treating or preventing chronic diseases, such as obesity, type 2 diabetes, and high blood pressure. Doctors are now much more likely to recommend lifestyle changes, including diet, before simply prescribing drugs. Even when drugs are prescribed, they are often accompanied by a sound diet and exercise regimen (Asp, 2005). Additionally, diet changes are not just a reaction to the immediate threat of chronic disease. Public health organizations realize that smart food choices and an active lifestyle can be used as an effective preventative measure to optimize health and well-being, with the greater goal of improving “healthspan,” as well as lifespan, across large populations (Hasler, 2000).

Meanwhile, there is a developing culture amongst aging baby boomers that is centered on health and wellness. Hasler (2000) calls it "the self-care movement." People are rediscovering a "do-it-yourself approach" to healthcare. Furthermore, nutrition science continues to be assimilated into popular culture, and people are reading food labels more often, as they become increasingly conscious of individual food ingredients, their function, and their benefits or detrimental effects (Kaplan, 2009).

The food industry has taken note of this scientific and cultural Zeitgeist, responding in an opportunistic fashion. The spreading awareness of the connection between diet and health within Western culture has prompted advertisers to leverage health claims in order to gain a competitive advantage in the market and cater to these more savvy, health-conscious people (Mathios & Ippolito, 1999). Initially, the food industry strictly viewed such claims as a way to sell products that were already perceived as being nutritious and beneficial to general health. This means that health claims were traditionally much more likely to be made on "core food groups," such as dairy or breads and cereals. Conversely, they were rarely made on "peripheral foods" like alcohol, soda, and candy (Williams, Tapsell, Jones, & McConville, 2007).

More recently, however, advertisers have begun to include health claims in food products such as snacks, sports drinks, and even alcohol. Sugary drinks claim to have antioxidants and beneficial vitamins or minerals. Beer brands, like Miller 64, target active, fit people, asserting that they are better for you because they contain less carbohydrates and calories. Meanwhile, cookie, chip, and white bread producers tout fiber content, as well as fortified vitamins, to distract consumers from all of the unhealthy and potentially harmful ingredients in the product (Coach Calorie, n.d.).

Health Claim Types

Health claims in food advertising typically fall into a few different categories. The most common ones are general or generic in nature. These broad claims may emphasize scientifically supported links between various nutrients and well-being or the effects of these nutrients on mental and physical performance. They may also point out the role that certain nutrients play in reducing the risk of chronic conditions, such as heart disease, cancer, osteoporosis, cholesterol, or weight loss (Williams, et al., 2007; Lähteenmäki, et al., 2010). Advertisers also make product-specific claims, in which they declare their food product offers unique benefits that other foods do not necessarily provide (Mathios & Ippolito, 1999). Finally, there are comparative health claims, in which one product is positioned as having higher levels of beneficial nutrients (e.g. Fiber, antioxidants, vitamins) or lower levels of detrimental substances (e.g. Sugar, trans-fat, preservatives) (Andrews, Burton, & Netemeyer, 2000). Some health claims may simply point out the presence of an ingredient, with the presumption that consumers already believe that ingredient is good for them. Other health claims tend to include additional context, explaining an ingredient's functional properties and possibly the tangible beneficial outcomes it can provide when consumed (Lähteenmäki, et al., 2010).

How Consumers Interpret Health Claims

It is particularly important to understand the psychology behind interpretation of food-based nutritional claims because many of today's formulated foods can be classified as "credence goods," meaning that consumers are not able to accurately judge these foods based solely on the quality of sensory experience (i.e. taste). Food producers often combine or process ingredients in such a way that taste is enhanced while unhealthy attributes are obscured (Caswell & Padberg, 1992). Therefore, reliance on food labels and advertising is much greater in order to make healthy food product purchase decisions. Research on consumer interpretation of claims

reveals two prevalent patterns: familiarity and specificity. Both have a significant impact on how a claim is received by consumers.

People tend to be suspicious of new or unfamiliar health claims that have not yet become commonplace within mainstream popular culture. This is especially true if the health claims happen to contradict other trusted information sources and/or deeply ingrained beliefs. In other words, supplementary information sources and existing knowledge play a large role in the acceptance of health claims (Lähteenmäki, et al., 2010).

For example, back in the 1960s and 1970s, the American Heart Association (AHA) stated that a diet containing high levels of saturated fat and cholesterol was likely a major factor in heart disease (Paige, et al., 1961). Later, the AHA directly recommended that egg consumption be minimized because it was believed to greatly increase cholesterol levels (American Heart Association, 1973). More recently, however, meta-analyses of relevant studies have disproved the theory that eating eggs can heighten the risk of heart disease, and, consequently, the AHA has since removed its recommendation to limit the consumption of eggs (Howell, et al., 1997; Kritchevsky, 2004). In fact, the egg is now considered to be a natural functional food because it contains both rich nutrients and high quality protein (Hasler, 2000).

Today, companies leverage these more recent findings by touting the many benefits of eggs in advertising-based health claims. Still, consumers often remain skeptical and concerned about eating eggs because of their long-time, internalized beliefs about the connection between eggs and heart disease (Gilbert, 2000). It is only through increased exposure to the latest scientific findings, media reports, or word-of-mouth, that such consumers gradually come to fully accept this new social representation of eggs as a healthy or “good” food choice (Lähteenmäki, et al., 2010).

Familiarity may impact consumer perceptions at a broader level as well. When it comes to food brands, consumers are sometimes susceptible to a "halo effect," in which they assume that a brand positioned as "healthy" in the market only produces foods that are healthy and nutritious. Therefore, consumers' beliefs about the general healthiness of a brand may significantly influence their evaluation of various food products, as well as their ultimate eating choices (Williams, et al., 2008). Chandon and Wansink (2007) found that customers of the fast-food chain, Subway, were more likely to underestimate their calorie consumption than McDonald's customers, as a result of Subway's persistent marketing claims that it is the healthier fast-food alternative. Even those who are quite knowledgeable about nutrition often overgeneralize and make invalid assumptions about certain foods that a brand carries (Andrews, et al., 1998).

Consumers are more convinced by specific claims than generalized claims. In addition, specificity leads to more favorable evaluations of products and less skepticism about the health claims being made. For instance, broadly claiming that a product is "healthier" will not be as effective as specifically claiming that the product has 1/3 less salt. A health claim can be even more influential, however, if it contains a direct linkage to a particular health benefit or condition (e.g. "yogurt may reduce the risk of osteoporosis") (Andrews, et al., 2000). Additionally, van Kleef, van Trijp, and Luning (2005) found that products are perceived most positively when health claims include details about disease prevention and overall internal health improvement, rather than psychological benefits or physical appearance improvements. At the same time, simply adding more content to claims on a food label is not necessarily better. Rather, the information must be thoughtfully anchored inside a frame of reference that consumers can both relate to and trust (Grover, 2010). "Which?" (2010), a British consumer advocacy group,

recommends a labeling strategy in which all messages are concise, salient, consistent, coherent, and clearly based on valid scientific evidence. With this approach, they recognize that packaging health claims in a more usable and practical form can help consumers make appropriate food purchase and eating decisions.

The significant impact of claim specificity suggests that claims may not necessarily create a "halo" effect, but rather an activation effect, stimulating consumers to retrieve previous nutritional knowledge (Lähteenmäki, et al., 2010). Spreading-Activation Theory may explain how detailed health claims that associate nutrients with disease prevention or distinct health benefits can prime previously learned concepts. In this theory of human semantic processing, all discovered concepts are represented as nodes within a memory network. The concept nodes are linked together based on how they contextually relate to each other within one's mind. When a person is externally presented with a concept (e.g. "Vitamin D"), its node becomes activated. This activation instigates a spreading pattern of subsequent link and node activations outward from the initial, stimulated concept node. As these activations trace through the semantic memory network, the most strongly related concepts are triggered, tagged, and primed along the way (Collins & Loftus, 1975). In the "Vitamin D" example, these related concepts might include various health benefits of Vitamin D that the consumer has previously been introduced to while reading newspaper articles or watching television shows. Consequently, if a health claim suggests that "Vitamin D" is associated with "immune system boosting," the activation pathways of these two concepts may intersect on other health benefit beliefs that the consumer learned about, such as "reduces risk of cancer" or "helps prevent arthritis." Since the health claim "reminds" consumers of these additional advantages, the scope of the health claim becomes implicitly expanded, while its overall effect is strengthened. This can ultimately lead to a more

favorable evaluation of the product, as the spreading-activation process legitimizes, bolsters, and broadens a specific claim within the consumer's mind (Andrews, et al., 2000).

Problems with Health Claims

Researchers and consumer advocates have highlighted a number of concerns in regards to health claims. These include a lack of emphasis on a holistic diet, selective highlighting of favorable ingredients in the marketing of a food product, no context for nutrient comparisons, and a blurred line between food labels and front-of-package marketing.

Most food advertising and informational content on packaging is based heavily on an underlying assumption that the food we eat can and should be analytically broken down into individual nutrient components (Caswell & Padberg, 1992). Treating nutrition in such a reductionist manner can lead to an overemphasis on granular, isolated nutrients that make up whole foods, and in turn whole diets, and this is worrisome to many clinicians (Kaplan, 2009; Lähteenmäki, 2010). True health requires a holistic awareness of diet and lifestyle, rather than a narrow focus on individual food elements (Caswell & Padberg, 1992; Kaplan, 2009).

Advertisers are naturally selective about which ingredients they highlight and which ones they may try to obscure. This is common with snack foods and breakfast cereals. They assert that the product is healthy because it is fortified with synthetic vitamins, but at the same time, they ignore the high levels of sugar, fat, sodium, and/or preservatives that are also present in the food ("Code for advertising," 2010). Products are generally framed as healthy, while the health claims are designed to distract consumers from the more detrimental aspects of their nutrition profiles (Ippolito & Mathios, 1991). A company may claim its processed food product is low in fat, while simultaneously ignoring the heavy sodium content required in keeping it preserved. As described earlier, consumers may succumb to a halo effect and make undeserved inferences about the

overall healthy status of a food, based on exaggerated or cherry-picked claims (Chandon & Wansink, 2007). The addition of vitamins to a food product that is fundamentally unhealthy will not neutralize its negative impact on the body (Kaplan, 2009).

Health claims often include comparisons of nutrient levels that both lack context and are vague in nature. Consumers cannot effectively process statements such as "reduced sodium," "without all the fat," "loaded with fiber," or "20% more antioxidants" when evaluating how healthy a food product is. These marketing messages offer no anchor point, and thus they are virtually meaningless as informative comparison statements (Andrews, et al., 2000).

Food advertisers, in general, have become very clever at playing with language in order to find legal loopholes. They use a number of techniques in their health claims that are technically allowed, but can still be quite misleading. For example, a food company cannot call one of its products "better" than another competing brand, unless they have objective proof that this is indeed the case, and they then justify why it is better. However, these advertisers can alternatively use the word "best." This is legally interpreted as being equally as good as other top brands, regardless of how it is actually interpreted by consumers (Schrank, n.d.). Qualified descriptors, such as these, are often used in marketing, despite the fact that they don't really have any sort of accountable meaning. Instead of saying that a food cures a disease or prevents a condition, the advertiser might say that it "helps fight" the condition. This sort of vague claim is hard to disprove, and it is more difficult for the FTC to sanction (Gerhart, 2002). Marketers will also make health claims that are designed to seem unique to that brand, but are actually just as true for any competing brand in that food category; for instance, pointing out that a bread product is made of natural grains (Schrank, n.d.). Obviously, all breads are made of natural

grains. In addition, they sometimes claim that a food product has more of a particular nutrient without explaining why this might even be desirable from a health standpoint.

Positive Aspects to Health Claims in Advertising

Despite the concerns, health claims made by the food industry can also have positive effects. Furthermore, it is important to recognize that government-mandated nutrition labels on food products have their own set of issues and limitations. For one, they are not necessarily the most intuitive or convenient source of health information (Caswell & Padberg, 1992). Nutrition facts, by design, have a very limited scope. Although the format is consistent and they explicitly list a food product's ingredients and levels of nutrients, they do not include any sort of practical, explanatory context in order to help consumers understand why various nutrients or ingredients can improve their health and well-being (Childs, 2010).

One significant problem is that standard food labels only contain absolute and relative disclosures. The labels describe the absolute amounts of various nutrients that a food contains, and they also show the relative percentage a serving contains of the FDA's total recommended daily consumption. However, they don't extend and link this data to real-world health benefits. Advertisers, on the other hand, often include "evaluative disclosures" in their claims, explicitly describing the relationship between certain nutrients or whole foods and the reduced risk of various diseases (Andrews, et al., 2000). They offer commonsense reasons for why people should care about eating more fiber or less sodium. For example, a health claim may state that the food product has 50% less sodium than competing brands, and then go on to explain that too much sodium in the diet can increase the risk of high blood pressure, stroke, heart disease, or kidney disease. Andrews, et al. (2000) found that these evaluative disclosures can be effectively educational, and, as discussed earlier, they can also trigger memory of previously gained

nutrition knowledge, ultimately helping consumers construct more reliable beliefs about a food product's health value.

Food advertisements in magazines, on television, and on the front of packages, have the potential to increase consumer awareness of the ways in which diet affects health. After the FDA lifted the ban on health claims for food products in the mid 1980s, Mathios and Ippolito (1999) found that public knowledge of the link between fiber intake and cancer rates increased substantially across all education levels. They also point out that Americans consumed less fat and cholesterol after health claims were allowed in advertising, while consumption of cereal, fruits, and vegetables increased.

Ippolito and Mathios (1991) suggest that food industry advertisers could be more effective and efficient than government and non-profit organizations at reaching certain demographics and communicating certain messages related to diet and health. Furthermore, corporate marketers are very good at simplifying buying decisions through productization. This relative lack of ambiguity and complexity could make healthy food choices easier to incorporate into behavior. Of course, the remaining concern is that such abstraction and oversimplification leads to misguided beliefs about nutrition, the distinct power ("magic bullet" effect) of individual foods, and a loss of perspective on a holistic diet and lifestyle (Kaplan, 2009).

Moral Frameworks Surrounding Food Advertising

There are a number of traditional moral frameworks that can help guide food product advertising and government regulation of health claims. These include ethical models defined by Kant, Mill, Rawles, Nodding, and the Judeo-Christian-Islamic traditions. It is critical to understand how these frameworks apply when defining food policies that affect consumers.

At a very broad level, Kant's categorical imperative emphasizes the importance of food safety and truth in nutritional health assertions. Food and physical well-being are two of the most basic needs for every person on this planet. Thus, this is a matter of social justice, and it must be considered in the context of universal law (Kaplan, 2009). Religious commandments within Judaism, Christianity, and Islam are also similarly relevant to the marketing of food. These theological virtues hold human dignity, justice, and truth as paramount to everything else. Moral relativism, in which the commercial interests of food companies are considered, does not have a place under Kant's guidelines or religious-based, divine principles. These moral rules are unconditional and without exception, ensuring that "what is right for one is right for all" (Christians, et al., 2009, p. 15). This also applies to a “sanctioned use of science” by the food industry in their advertising (Williams, Tapsell, Jones, & McConville, 2007, p. 3). Using Kantian logic, if scientific findings in health claims are distorted, misleading, or blatantly manipulative, this information loses its objectivity and ubiquitous moral authority.

Mill’s utilitarianism also provides a useful lens to view health claims and food advertising. When it comes to core human tenets, such as nutrition and health, a healthy population benefits all. It can lead to greater productivity, less widespread disease, and lower healthcare costs. Good nutrition can even lead to lower rates of violence and crime within a society. This is because various nutritional deficiencies can cause significant brain dysfunction and behavioral problems, especially amongst children. For example, a diet lacking in omega-3 fatty acids can create low dopamine and serotonin levels, which in turn, affects the ability to learn from reward and punishment, manage emotions, or restrain impulses (Lawrence, 2006). Benton and Gesch (2003) conducted a prison study in which they determined that enhancing inmates’ diets with vitamin and fatty acid supplements reduced antisocial behavior, including

violent incidents, by 26%. Moreover, poverty, a major factor in the prevalence of crime, can be significantly reduced by eliminating hunger and malnutrition (Becker, 1968; Weisfeld-Adams & Andrzejewski, 2008). Mill's principles emphasize that issues of morality should be based on what will produce the greatest happiness for all of society (Christians, et al., 2009). The social and economic health of a community, in turn, is directly impacted by individual choices when it comes to nutrition and a healthy lifestyle. In this light, it is most important that health claims help consumers make smarter food product purchases. Profit motives of food companies can never supersede this primary requirement.

Rawles's veil of ignorance model reminds us that a democratic government is morally obligated to ensure the protection of vulnerable populations, including children, poor families, and those with less education. The idea is that regulation should encourage an egalitarian society in which no groups of citizens are exploited (Christians, et al., 2009). In terms of health claims, this means that qualitative and quantitative studies should be conducted in order to see how the most vulnerable populations interpret them, and make sure that there are no detrimental misunderstandings.

Freedman and Jurafsky (2011) found that there are indeed recognizable distinctions in how food is marketed across socioeconomic demographics. More expensive food products, targeting those with higher social class status, use a different linguistic style with more complex grammar and a certain vocabulary. However, more importantly, the health claims and metaphors are much more specific on these more expensive food products. As described earlier, consumers respond more favorably to specific, evaluative health claims (Andrews, et al., 2000). In addition, products aimed at higher social classes emphasize healthiness, naturalness, organic ingredients, and authenticity considerably more. According to Freedman and Jurafsky, this discriminatory

marketing encourages class division, and it is based on the food industry's faulty assumption that only upper class consumers would ever care about eating healthy and natural food. Meanwhile, the cheaper food products, designed to target consumers in a lower socioeconomic class, focus marketing around larger portions, heartiness, cost value, and the brand's historical tradition. Because it is assumed that lower class people don't make buying decisions based on health, these more vulnerable populations may not benefit from any potential positive benefits that health claims could have, such as awareness of the link between certain foods or nutrients and prevention of disease.

Finally, Noddings' relational ethics principles are applicable to food production and marketing as well. Noddings believed that human care should be a primary factor in moral decision making. This means that a provider should be conscientious in caring for others in all actions (Christians, et al., 2009). It can be argued that providing food, or sustenance, is an important part of caring for someone. Therefore, the food industry, as a provider of products that consumers feed their families with every day, should be morally responsible for providing truthful information about the nutritional quality of these products, as well as the role such products play in overall health.

Government Regulation of Health Claims in Food Marketing

Around the world, government-based regulatory agencies have enforced various labeling practices, created incentives, and introduced certification programs in an attempt to protect consumers, and ensure that they are getting accurate health information about the food products they rely upon. In Japan, the UK, and Australia, only general or high level claims can be made about the health benefits of foods and nutrients. Disease factors can only be referred to in a generic, qualified fashion (Jacobson & Silverglade, 1999; Kaplan, 2009). The United States

allows more specific health claims in certain cases where there is considerable and undisputed scientific evidence to support the claim being made (Gerhart, 2002). Scientific substantiation is a paramount factor to all regulatory bodies, as this is the only way to ensure the dissemination of truthful nutrition information. It also creates a level playing field for food companies, engendering fair market competition (Asp, 2005).

In the United States, food labeling and advertising has long been a complex affair. Since Congress passed the Food and Drug Act in 1906, the FDA (initially known as the USDA Bureau of Chemistry) has been tasked with regulating food labels at a national level. The FDA was formed to both inform and protect consumers when it comes to the safety and health of ingestible products. Eventually, the FDA's jurisdiction was expanded beyond food to drugs, liquor, and cosmetics (Childs, 2010). The FDA is particularly concerned with whether health claims made on food packaging are misleading. This evaluation includes not only what is explicitly said in the claims, but also what is deliberately omitted. Essentially, the FDA regulates the meaningful content of claims to make sure that it is both accurate and consistent with scientific findings, and that it doesn't suggest false health benefits.

The FTC was founded 8 years after the FDA for two distinct purposes: to ensure fair market competition, while at the same time, protecting consumers from a health, safety, and financial standpoint (Gerhart, 2002). The FTC is mostly concerned with false advertising and detecting patterns of deception. Their jurisdiction is limited to food advertising (Mathios & Ippolito, 1999).

The dividing line between the FDA and the FTC, within the realm of food labeling and advertising has historically been contentious. At a basic level, the FDA regulates food labeling, while the FTC regulates food advertising (Gerhart, 2002). The Wheeler-Lea Amendments (1938)

and the Memorandum of Understanding (1954) helped to clarify the distinctions of the two governmental agencies. These congressional actions also set the stage for how the two bureaucracies should cooperate in the context of any filed complaints or investigations. These collaborative expectations remain to this day (Childs, 2010; Gerhart, 2002).

Perhaps, the most challenging domain for the FDC and FTC is food packaging. Americans are typically confident in the accuracy of food labels, and the industry often takes advantage of this consumer trust by blurring the line between marketing and nutrition facts. Such overlap can create confusion over what information is objective enough to rely upon in order to make truly healthy eating decisions (Childs, 2010).

The Fair Packaging and Labeling Act of 1966 mandates that food products must have a consistent and standardized label format that includes the absolute and relative levels of various nutrients, as well as a comprehensive list of all the raw ingredients that a food contains. It was originally designed to help consumers (more easily) make health-conscious product selections. However, the ability to effectively use this knowledge is also dependent on advertising, government-based dietary education programs, and past personal experiences. Furthermore, standard nutrition labels tend to be hidden on the back or bottom of packaging, and they are far more complex then simple advertising messages (Caswell & Padberg, 1992). Because of this placement and complexity, labels may be less than optimal for grocery store customers who are in a hurry or continually distracted by their children.

As a result of these issues with current package labeling and messaging, the collective focus has turned specifically toward front-of-package content. Several simplified nutritional rating systems have been proposed and piloted. The Smart Choices Program is one recent example of such a rating system, and it demonstrates the many challenges associated with

creating a valid, reliable model that consumers can trust. As with other similar rating systems, such as Guiding Stars or Facts Up Front, the Smart Choice founders insist that the program is coalition-based, including academic scientists, professional health experts, and government officials (Childs, 2010). Unfortunately, food industry executives from companies such as Kellogg, Kraft, and PepsiCo, have historically dominated these coalitions. The Smart Choices Program demonstrates how this self-regulation has turned out to be problematic (Ruiz, 2009).

While the primary public mission of the Smart Choices Program is to provide consumers with a recognizable, summarized view of a product's true nutritional value, it has come under heavy fire from critics (Ruiz, 2009). Opponents claim that the Smart Choices Program is an insincere effort by the food industry to educate consumers and improve health transparency. They insist that the underlying nutritional criteria that the certification process uses is flawed and basically represents the bare minimum in terms of qualifying a product as a healthy food. These critics believe that the abstracted rating system's true, hidden purpose is actually to mislead or distract consumers by demotivating them from critically analyzing the actual contents on the more detailed, FDA-mandated "Nutrition Facts" label. There is also a potential conflict of interest because the program essentially receives revenue from participants who carry the certified logo on their products (Childs, 2010). This may inherently encourage the backing organization to be less discriminating or stringent in its certification process.

Only a few months after its launch, the Smart Choices Program was indefinitely halted when the FDA announced that it would be investigating complaints that questioned the system's credibility. For instance, Fruit Loops and Fudgsicles were given permission to carry the Smart Choices logo, despite the substantial amount of sugar they contain (Ruiz, 2009). Since then, the FDA has taken a more prominent and proactive role in developing a universal set of criteria for

all front-of-package health claim content. Childs (2010) applauds this direct involvement and also encourages extended cooperation between the FDA and the FTC in order to leverage each of their strengths in the context of effectively regulating front-of-package messaging. She argues that the FDA has the nutritional science expertise to define nutritional criteria, while the FTC richly understands consumer behavior and what it takes to influence healthier buying decisions at the supermarket. At the end of the day, developing one, unified set of criteria is much less confusing for consumers than allowing several, competing front-of-package programs to each design their own standards.

The Emergence of Functional Foods

After the FDA lifted the health claim ban, and food companies realized that marketing focus on nutrition could be profitable, a new crop of products quickly began to emerge. These are known as "functional foods," and they include nutraceuticals, supplements, and even certain genetically modified foods (Hasler, 2000). Nutraceuticals are foods that are enriched or fortified with specific isolated nutrients, which have been allegedly identified to help prevent or treat disease (Cencic & Chingwaru, 2010). Iodine-enriched salt, fluorinated water, and milk fortified with vitamin D are all common examples of nutraceutical products that can be found in most American supermarkets. Sometimes, certain natural components of functional food are removed, rather than added, if these parts are considered to be unhealthy (Kaplan, 2009). For instance, isolated egg whites are sold, separated from the yolks, or peanut butter is sold with most of the peanut oil removed. Supplements are concentrated nutrients or vitamins that are taken in addition to food eaten in the context of a normal diet. They are typically sold in the form of pills, capsules, tablets, or even liquid (Cencic & Chingwaru, 2010). Genetically modified foods, such

as golden rice, are scientifically engineered to contain higher levels of certain vitamins and other nutrients (Hasler, 2000).

Under very specific circumstances, functional foods have been valuable in fighting malnourishment and disease amongst vulnerable populations around the world. Iodine was originally added to salt to prevent goiter, while golden rice was designed to contain elevated levels of vitamin-A to prevent blindness in starving children (Kaplan, 2009). On the other hand, many people have also raised numerous criticisms and concerns about functional foods. These include blurring the line between food and drugs, as well as clashing objectives between the food industry and the medical professions. Moreover, many question the actual effectiveness and safety of enriching processed foods with a high level of isolated and potentially synthetic nutrients.

Jacobson and Silverglade (1999) worry that some processed, functional foods are becoming more similar to a man-made drug than a natural food product. This issue is magnified by the fact that the FDA does not typically require any sort of pre-market approval, despite the fact that highly concentrated synthetic vitamins and minerals are often added to these products, along with various preservatives and flavor enhancing chemicals (Hasler, 2000). Disclaimers, like the ones commonly found on all drugs (listing potential side effects and allergies), are also not consistently required (Kaplan, 2009). Therefore, there is no real guarantee of consumer safety, and it is possible that such synthetic additives could be a health danger.

This problem is compounded by the fact that the FDA doesn't seem to have reasonable, consistent, or nuanced enough regulation guidelines to help them effectively decide when to intervene and when not to. While the agency has taken a laissez faire approach with health

claims made on many fortified and/or heavily processed snack products (e.g. potato chips), it has surprisingly cracked down on similar claims made about natural, minimally processed foods.

In one particular case, back in 2010, the FDA aggressively went after Diamond Foods because it featured independent scientific studies on its website which demonstrated various health benefits of walnuts. The FDA determined that the company was misbranding its packaged walnuts with unapproved health claims. It even went so far as to classify the Diamond Foods packaged walnuts as an illegal "drug" based on the claims made in these studies that the company linked to online (Faloon, 2011).

The FTC has faced similar dilemmas in deciding what companies and products to go after in the name of consumer protection. In the same year as the FDA's case against Diamond Foods' walnuts, the FTC issued a complaint, charging POM wonderful with misrepresenting scientific studies and making exaggerated, health claims about its pomegranate juice products (Lordan, 2010). In this situation, however, the health claims made by the food producer, as well as the studies used to support these claims, were more carefully examined. After its review, the FTC determined that the findings of the cited studies were not sufficient enough to warrant such bold health claims by POM Wonderful.

Another problem with functional foods has to do with competing interests and influences that do not necessarily have consumer health as a primary objective. Functional foods are a creation of the food industry, and independent medical or nutritional experts do not typically back them. The big question is whether such products benefit large corporations more than the consumers. The industry has quickly learned that selling generic, raw foods is considerably less lucrative than selling heavily processed and fortified food formulations (Kaplan, 2009). For one, the more ingredients a company puts in its product, the more it can differentiate the product from

its competitors. Also, adding preservatives, and processing or packaging foods in a certain way, allows the products to be shipped further and last longer without spoiling. However, these profit-driven industry benefits may require a significant level of sacrifice when it comes to consumer health. Furthermore, major food companies have unfortunately demonstrated their desire to manipulate or deceive the public by co-opting nutritionists, distorting scientific findings, and even lobbying against government initiatives that call for voluntary nutrition guidelines when marketing to children (Harris & Patrick, 2011; Layton & Eggen, 2011).

Finally, the entire premise of functional foods may be questionable at best. Some scientists, nutritional experts, and medical clinicians are not convinced that artificially isolating ingredients or breaking whole foods down and rebuilding them in different ways really leads to a nutritious, healthy product in the end. It is possible that we don't know enough about the critical interactions and natural balance of unadulterated, whole foods that humans have evolved to consume over many thousands of years. The individual nutrients that are often extracted, concentrated, and used to enrich processed products, may be much more nutritionally valuable as an integrated part of a naturally occurring, raw food source than they are when added as an afterthought to a reformulated meal that is created in a lab (Pollan, 2003). According to Pollan, "Foods, it appears, are more than the sum of their chemical parts, and treating them as collections of nutrients to be mixed and matched, rather than as the complex biological systems they are, simply may not work."

Learning a New Language of Interdependence and Care

Today, our society is structured in a manner that leads people to over-consume unhealthy food (Wallack & Lawrence, 2005). Since everyone is always on-the-go, home cooked dinners are prepared less often, and people are accustomed to grabbing quick meals that typically consist

of highly processed ingredients. Moreover, the food industry encourages people to eat poorly by placing health claims on snack products that selectively highlight a few nutrients, while ignoring the overall negative impact that the food may have on the body. At the end of the day, chronic health conditions, such as obesity, type 2 diabetes, and heart disease continue to be on the rise among many American populations. These epidemics can be directly correlated with poor diets and dysfunctional eating habits (Mathios & Ippolito, 1999). Clearly, FDA/FTC regulations and competitive free market forces are not leading to a healthier America. Therefore, some in the public health arena are beginning to suggest alternatives to the traditional interventions.

The language used by American public health experts often reflects the country's strong emphasis on individualism, self-reliance, and personal responsibility. Wallack and Lawrence (2005) state:

> Many public health advocates tend to fall back on a language of service provision and behavior change… But that strategy reinforces the first language of individualism by emphasizing a risk factor approach… Discussion of social, political, and economic context is often only cursory. (p. 569)

They insist that researchers and political leaders spend more time focusing on the social determinants of health, while developing a substitute language centered on community, interdependence, and humanitarian values.

Focusing primarily on individualistic behavior change is a reactive, rather than a proactive model. The mission of public health, according to the Institute of Medicine (1988), is "fulfilling society's interest in assuring conditions in which people can be healthy" (p. 7). This implies that there are more systemic or collective solutions that may work better to engender a healthy population. Wallack and Lawrence (2005) propose that health advocates consider

adopting political theorist Joan Tronto's "ethic of care" philosophy. This perspective recognizes that we are not isolated individuals, but rather interconnected social beings. It also emphasizes that we all have a responsibility to care for one another.

Wallack and Lawrence's (2005) approach is highly compatible with the moral frameworks discussed in this paper. For instance, its underlying egalitarian nature fits in with Mill's utilitarianism and the goal of producing the greatest happiness for society as a whole. Similarly, it also supports Rawl's objective to protect vulnerable populations and ensure that no particular group is exploited. Most of all, Tronto's "ethic of care" is directly related to Noddings' assertion that human care is paramount when making moral decisions, and caring for others should be a central motivation in all actions.

Conclusion

In this paper, I have discussed the moral implications of various types of health claims that the food industry uses when advertising its products. I also examined both the negative and potentially positive impacts of such marketing on consumers. As we have seen, the government has achieved mixed results in attempting to regulate food advertising. Meanwhile, the industry has strategically responded to an evolving health-conscious consumer culture by introducing enriched functional food products, which have proven to be controversial in a number of ways.

As long as food is produced and delivered to consumers as a material "product," there is potentially going to be conflicts between the capitalistic interests of the food industry and the health of the populations who buy these products. In order to compete, companies feel they must engineer a unique offering that is sufficiently different than what the competition is providing, and also can be presented as having more or better "features" (e.g. health claims, taste). Unfortunately, this differentiation appears to be easier to do when processing, fortifying, or

otherwise manipulating ingredients, rather than simply offering natural, whole foods. Even raw produce may be genetically modified in order to alter its size, appearance, taste, and/or nutritional content.

This is why, historically, regulation of health claims has proven to not be enough. Moving forward, morality and ethics must play a vital role in both food advertising policy and nutrition-based public health initiatives. This is the only way to ensure that all members of society, rich or poor, have sufficient knowledge of how to access safe, nutritious, and high quality food that will keep them healthy and disease-free throughout their lifetimes.

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