

Institution: University of Liverpool		
Unit of Assessment: UoA18 Law		
Title of case study: Tackling Childhood Obesity: Defining Food Marketing as a Global Child Rights Concern		
Period when the underpinning research was undertaken: 2013-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Amandine GARDE	Role(s) (e.g. job title): Professor	Period(s) employed by submitting HEI: 1 st April 2013 - present
Period when the claimed impact occurred: August 2013-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact <p>Garde's research has conceptualized food marketing, which contributes to rapidly growing rates of child obesity, as a major global children's rights concern, with two main consequences. Firstly, her research has tangibly reshaped the prevailing policy discourse on child obesity amongst key public health actors, including international organisations such as Unicef, the World Health Organization, the European Union, and NGOs. As a direct result of this engagement, these actors have adopted more coherent, unified legal and advocacy strategies, acknowledging the imperative to regulate food marketing effectively to protect child rights. Secondly, through the development of innovative policy tools and the provision of bespoke training courses, Garde has actively contributed to policy change at national and regional levels. To date, she has trained over 80 governments and national public health agencies, as well as key NGO federations and their members around the world on how to make concrete improvements to national and regional policies and actions plans to prevent child obesity.</p>		
2. Underpinning research <p>By combining expertise in consumer, trade, health, food, advertising and human rights law, Garde has bridged the traditional boundaries between sub-disciplines of law that are rarely studied together and has therefore facilitated a better understanding of the complex and cross-cutting legal issues that the regulation of food marketing raises in practice.</p> <p>In particular, and following 15 years of extensive research, Garde has argued that exposing children to the marketing of unhealthy food infringes their rights under the UN Convention on the Rights of the Child (CRC). This work intensified after Garde spent 5 months at the WHO as part of an ESRC follow-on Impact Grant in 2013 to work on food marketing and child obesity specifically ([3.1]-[3.6]).</p> <p>Three main findings derive from the premise that child obesity and food marketing more specifically should be understood not only as major public health concerns (which they have since the late 1990s), but also as major global children's rights concerns, as Garde has demonstrated.</p> <ul style="list-style-type: none"> • Harnessing the potential of human rights law, Garde has established that States should be held legally accountable to protect children from unhealthy food marketing. As a result, they must regulate the marketing of unhealthy food in order to protect children and their rights from its harmful impact. Beyond establishing the need for regulation, Garde's research has fleshed out what child-rights based regulation would require in this field. She has highlighted the lack of effectiveness of industry self-regulation, which purports to "promote food responsibly to children", and the inherent conflicts of interests that such self- 		

regulation entails – hence demonstrating the clear advantages of legally binding restrictions – in this policy area ([3.1]; [3.2]). She has also actively advised that governments should adopt comprehensive rules to protect children from the harmful impact of unhealthy food marketing: this necessitates that State protect all children, including adolescents, both from exposure on all media with which they engage (beyond children's programmes on television), and from all marketing techniques which increase the power that unhealthy food marketing has on them ([3.1]; [3.3]; [3.4]).

- Considering the rapid growth of digital marketing and its international reach, Garde has researched the specific harms associated with such marketing and how they should be addressed. There are three main aspects to this strand of work. Firstly, Garde has argued that food digital marketing not only raises health and nutrition concerns but it also raises privacy and economic exploitation concerns ([3.1]; [3.3]). Secondly, she has called on the European Union (EU) to regulate cross-border marketing more effectively to address the child rights implications of digital food marketing. Thirdly, she has delineated the regulatory space that EU Member States retain to protect children's rights from harmful marketing ([3.2]; [3.6]).
- Garde has argued that international economic law – and in particular, World Trade Organization, international investment and EU internal market law – does not preclude the adoption of comprehensive unhealthy food marketing restrictions on public health grounds, contrary to widespread assumptions promoted by multinational food companies. This nonetheless requires that States frame their public health and nutrition policies in full cognisance of their international economic law obligations, and in particular show that their rules are “necessary” ([3.1]; [3.4]; [3.5]).

3. References to the research

- 3.1. Garde et al, [A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers](#) (Unicef: New York, 2018)
- 3.2. Garde, Jeffery and Rigby, 'Implementing the WHO Recommendations whilst avoiding real, perceived or potential conflicts of interest', in Garde (guest editor), *Special Issue on the regulation of food marketing to children in Europe*, *European Journal of Risk Regulation* 8 (2017) 237–250 [available on request]
- 3.3. Tatlow-Golden and Garde, '[Digital food marketing to children: Exploitation, surveillance and rights violations](#)', in Special Issue on food systems, *Global Food Security* 27 (2020) 100423
- 3.4. Garde and Byrne, 'Combatting obesogenic commercial practices through the implementation of the best interests of the child principle', in Garde, Curtis and De Schutter (eds), *Ending Childhood Obesity: A Challenge at the Crossroads of Human Rights and International Economic Law* (Elgar, 2020), Chapter 10 [REF2]
- 3.5. Garde and Zrilic, '[International Investment Law and Non-Communicable Diseases Prevention: An Introduction to the Special Issue](#)', in Garde and Zrilic (guest editors), *Special Issue, Journal of World Investment & Trade* 21 (2020) 649–673
- 3.6. Garde and Friant-Perrot, 'The regulation of marketing practices for tobacco, alcoholic beverages and foods high in fat, sugar and salt – a highly fragmented landscape', in Alemanno and Garde (eds), *The Emergence of an EU Lifestyle Policy: The Case of Alcohol, Tobacco and Unhealthy Diets* (CUP, 2015), 68-93 [available on request]

4. Details of the impact

Child overweight and obesity affects 1 in 5 children worldwide and continues to rise rapidly. By defining child obesity and food marketing as major children's rights issues, Garde's research has played a central role in reshaping research and policy debates on tackling child obesity and has

directly shaped the discourse, the legal and advocacy strategies and the policy interventions of many public health actors around the world, including major international organisations such as the WHO, Unicef and the EU, over 80 national governments and public health agencies around the world, as well as several national, regional and global federations and alliances of civil society organisations and their members.

In 2014, Garde was appointed legal expert on the Ad Hoc Working Group on Science and Evidence assisting the WHO High Level Commission on Ending Childhood Obesity (ECHO). Drawing on her expertise, ECHO specifically called on States to protect children's rights and regulate food marketing more comprehensively **[5.2(a)]**. Following its endorsement by the World Health Assembly, ECHO's 2016 final report has laid down the foundations for the twofold impact of Garde's research on food marketing and child obesity:

1. *Shaping the discourse and the legal and advocacy strategies on food marketing of a broad range of policy actors*

Shortly before ECHO published its final recommendations, Unicef commissioned Garde to write the first policy report to systematically analyse the harmful impact of food marketing as a child rights issue and make policy recommendations for its effective regulation. Since its publication in April 2018, Unicef has explicitly recognised the need to address child obesity and all forms of malnutrition, moving away from its traditional focus on child undernutrition **[e.g. 5.3(a)]**. Garde's report for Unicef also inspired the briefing advocacy note that Unicef and the UN Special Rapporteur on the Right to Food wrote to mark the 30th anniversary of the CRC, identifying food marketing and child obesity as major child rights concerns **[5.3(b); 5.1(g) Unicef]**.

As a direct result of Garde's work, Unicef and the WHO also work more systematically together in a mutually enhancing way in this policy area: Unicef promotes the implementation of the WHO recommendations on food marketing to children, whilst the WHO promotes a child rights approach **[5.2]**. WHO is clear in this respect: "the new engagement of Unicef in the obesity prevention policy space is a clear example of impact" **[5.1(i) WHO]**. Explicitly relying on Garde's work and drawing on her expertise in the drafting of their policy recommendations, both the WHO and Unicef have invoked the CRC to call for:

- i) the regulation by States of food marketing (as opposed to the promotion of self-regulation);
- ii) a comprehensive approach (as opposed to a more incremental approach) to such marketing;
- iii) a specific focus on digital and other forms of cross-border marketing.

Unicef describes Garde as "one of the world's foremost experts on the intersection of childhood overweight and obesity, food policy and law...In particular, the work she has done with Unicef on the use of a child rights-based approach has been ground-breaking and has helped us to significantly shift the narrative with governments and civil society organizations." **[5.1(g) Unicef]**. Her research has helped "reframe discussion of childhood obesity prevention in terms of human rights and by identifying the limits of self-regulation" **[5.1(i) WHO]**.

The underpinning research findings of the Unicef report have been discussed at many high-profile policy events: e.g. at the plenary session on digital marketing to children at the 2018 European Public Health Conference, with over 1,500 registered participants; and at three EU Presidency Council Summits led by Malta, Bulgaria and Austria **[5.1(a) and (f)]**. These findings have also been disseminated through popular blog posts: e.g. for the NCD Alliance with over 2,000 member organisations worldwide. As a result, beyond its influence on UN agencies, this report is increasingly recognised as a key reference point for international organisations, governments and civil society actors alike who are willing to harness the potential of human rights law to address harmful commercial practices, call on governments to account for their failure to regulate such

practices effectively and, ultimately, better protect child health and child rights [e.g. 5.1; 5.4-8; 5.10].

2. *Building legal capacity to effectively protect children from unhealthy food marketing around the world*

Garde has also provided legal capacity “on the ground” by working closely with the UN, the EU, and States and civil society organisations around the world, leading them to work towards the better regulation of food marketing to children and address the lobbying strategies traditionally used against regulation by the food and advertising industries. In particular, Garde’s research “has helped WHO and the public health community more broadly to understand the impact of international economic law, including the law of the European Union, on regulation. This assists our organization to manage legal risk throughout the policy process” [5.1(i) WHO].

Garde has delivered face-to-face training to over 80 governments through the innovative regional legal capacity building courses she has developed for the WHO. These regional workshops have focused on law and obesity prevention (e.g. Cairo in 2015; Moscow in 2016), and food marketing regulation more specifically (e.g. Porto in 2014, Amman and Kuala Lumpur in 2015, St Ivis (USA) and UAE in 2018). These courses have targeted a broad range of civil servants, as well as health professionals, lawyers and public health and consumer protection agencies and non-governmental organisations. Some of them have led to further in-country training, providing the foundations for policy change and the more effective regulation of food marketing to children. For example, in May 2018, Garde ran a three-day workshop on food marketing regulation specifically designed for a group of government officials from 8 different ministries in Oman. This workshop has prompted the gathering of further evidence on the extent of food marketing in Oman and the establishment of a cross-governmental working group [5.1(h) WHO EMRO].

Garde was academic lead in the development by WHO of the *Law, Healthy Diets and Obesity* course, which first ran in Geneva in June 2019 and involved 45 representatives from across the governments of Sri Lanka, Kenya, Uganda and Tanzania. This workshop aimed to provide support in addressing rapidly growing rates of child obesity through law. Follow-up workshops are in preparation in each of these four countries and should lead to the more effective regulation of food marketing. “Awareness of the links between international law and healthy diets, particularly international trade law and international human rights laws law was low prior to the contribution of Professor Garde” [5.1(i) WHO].

Garde’s work has also directly influenced the work of the European Union to limit children’s exposure to unhealthy food marketing. In particular, the support she has provided to the Maltese and Bulgarian EU Council Presidencies has led to her direct input into the Public Procurement of Food for Health Guidelines, as well as two sets of Council Conclusions – leading to specific recommendations on the added value of a child-rights based approach to nutrition policies, the ineffectiveness of self-regulation and the regulation of food sponsorship [5.1(a) and (f)]. This in turn has led to the publication by the Commission of child-rights based guidance for Member States drawing extensively on the Unicef report [5.4]. Garde’s research has had “a direct and positive impact... helping to steer action... Member States representatives were made aware of policy options to which they were previously oblivious and argumentation that could be used to legally sustain a more ambitious course of action” [5.1(b) EU Commission].

Garde has also worked closely with national, EU and international federations of public health NGOs, both advising them on how a child rights based approach can support their advocacy strategies and drafting legislative provisions to increase the pressure on States and the EU to regulate food marketing more effectively. For example, the World Cancer Research Fund drew extensively and explicitly on her research expertise when developing their Food Marketing Guide [5.6]. Most notably, she has been appointed advisor to the European Public Health Alliance (EPHA) in recognition of her sustained engagement with its work and that of its members on the regulation of EU cross-border food marketing [5.1(e) EPHA]. She has offered several child-rights based advocacy-training sessions to EPHA and its members, and her work has become a key

resource in increasing the pressure on governments and the EU to better regulate food marketing and protect children's rights [5.1(e), (d) and (c) EPHA, EHN and EuroHealthNet; 5.5; 5.8]. She has recently drafted a model directive in support of the advocacy of a coalition of civil society organisations EPHA leads to promote legislative change at EU level [5.1(e) EPHA]. Her work is also increasingly used as a basis for legislative reforms in closely related policy areas, not least the regulation of alcohol and breastmilk substitute marketing [5.9; 5.10].

5. Sources to corroborate the impact

5.1. Testimonials evidencing the influence of Garde's research on policy of major organisations.

5.2. WHO reports to which Garde has contributed or which refer to her work.

5.3. Unicef documents to which Garde has contributed or which refer to her work.

5.4. EU Commission Joint Research Centre, Marketing of food, non-alcoholic, and alcoholic beverages. A toolkit to support the development and update of codes of conduct (2019).

5.5. Trans-Atlantic Consumer Dialogue, Resolution on the protection of children from digital food marketing (8 May 2019)

5.6. World Cancer Research Fund, Building Momentum Report on Food Marketing (2020).

5.7. European Public Health Alliance, End child obesity by tackling child exposure to unhealthy food marketing (2020).

5.8. NGOs responses to the EU Commission consultation on Children's Rights Strategy 2021-2024 (see in particular the European Public Health Alliance and the European Heart Network roadmap responses of August 2020).

5.9. WHO/Unicef Information Brief, International Trade Agreements and Implementation of the International Code of Marketing of Breast-Milk Substitutes – Frequently Asked Questions (2020).

5.10. Alcohol Focus Scotland, Promoting good health from childhood: Reducing the impact of alcohol marketing on children in Scotland (2016).