FEATURE

Unhealthy Food: The Beverage Industry's Digital Media Campaign to Stop the Approval of the Front-of-Package Labelling System in Mexico

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Introduction

The consumption of processed and ultra-processed foods is associated with various types of non-communicable diseases (NCDs), including cardiovascular diseases, breast cancer, and diabetes. Processed food products are usually made by adding salt, oil, and sugar as agents of preservation. These processes and their ingredients aim to increase the lifespan of foods, and also to make them more enjoyable by exaggerating or enhancing their taste.

Ultra-processed foods make use of other ingredients, with these mainly the result of industrial processes. Generally speaking, processed and ultra-processed foods contain excess levels of energy and also nutrients of concern. These include sugar, salt, saturated fat, and trans-fat, all of which may pose a substantial public health concern due to overconsumption.

The front-of-package labelling (FOPL) system helps consumers by alerting them to the content-levels of damaging nutrients, thus enabling them to make healthier food choices at point of sale. This system displays black octagons on products that exceed the cutoff points for energy and/or nutrients of concern.

International organisations such as the World Health Organization (WHO) and Pan American Health Organization (PAHO) developed FOPL as a tool for guiding consumers towards a healthier diet. The PAHO advocates for the right to health and to information, noting that, in Mexico, warning labels are comprehensible to all, regardless of socio-economic status and educational level. As well as enforcing the right to information, a priority of the state should be alerting citizens to dangerous health outcomes that can arise from the regular consumption of processed and ultra-processed foods. The adoption of an FOPL system should be encouraged.

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Indeed, in October 2019, the Mexican Congress established a mandatory labelling system in the General Health Law. This replaced the previous Guideline Daily Amount (GDA) statement to be found on processed and ultra-processed foods. This change was necessary because the GDA system faced several limitations. The

GDA statement gave information without context: that is, it provided no information on the recommended daily calorie intake for a healthy adult and did not distinguish between the needs of children and adults. Consumers would have to work all this out for themselves, without any guidance. Not surprisingly, evaluations of GDA showed that the information was difficult for students of nutrition (Stern et al. 2011), let alone the population in general (Nieto et al. 2019).

Civil society organisations provided public support to a change in the labelling system that would bring it into line with WHO and PAHO recommendations. After some years of public pressure (including vocal academic support) for improved regulation, the new system was approved in March 2020 as the Mexican Official Standard (*Norma Oficial Mexicana* (NOM)).

The approval process took from August 2019 to January 2020. This involved numerous meetings of working groups, and discussions with all the actors involved, including civil society organisations, academia, international organisations, government agencies and representatives from the food industry itself. These meetings were run by the Ministry of Economy and the Federal Commission for the Protection against Sanitary Risks (COFEPRIS). The first phase of the implementation of the new labelling system began in October 2020.

This kind of legislation does not favour commercial and financial interests. Similar legislation in other Latin American countries (such as Chile and Peru) was strongly resisted by these interests. In 2019, the World Cancer Research Fund International (WCRF) described the food industry's resistance to FOPL as the deployment of the 4Ds: delay, divide, deflect and deny.

In line with this strategy, throughout the consultation process in Mexico, strong opposition to changes to the existing labelling regulations was voiced by the food industry in the media (television, radio, both print and digital newspapers, as well as social media), and this opposition proved successful in at least delaying the passage of the new, tighter legislation on labelling.

This article will focus on the delaying tactics deployed by the food industry in digital media (including newspapers). We believe that documenting the Mexican experience can assist other countries in the design, approval, and implementation of new evidence-based policies. The intention is to show how the food industry's 4D tactics were used in digital media in Mexico as it sought to move towards a new system of FOPL.

Methods

We made use of Google to conduct a search of internet and digital newspapers in the Spanish language from 2019 to 2022. In doing so, we distinguished between information available before and after the implementation of the new law in October 2020. The keywords used to conduct the search were *labelling, official Mexican act, and food industry* (in Spanish, *etiquetado, norma oficial Mexicana 051, and industria alimentaria).*

Two independent coders were asked to categorise the main arguments found in the media according to the four main types of counterargument (the 4Ds) described by the World Cancer Research Foundation analysis (WCRF 2019) – delay, divide, deflect, and deny – with a percentage agreement of 95.6%, while a third coder checked this categorisation for discrepancies. Discrepancies were examined and resolved in a discussion with the three coders after a collective Zoom session.

In addition, given the massive political and economic implications of the COVID-19 pandemic, we also searched for any arguments in favour of a delay in approving the new regulatory system arising from this, thus adding to our search the terms coronavirus, COVID-19, and pandemic.

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We used the following definitions in our general categorisation of the food industry's arguments:

· Delay arguments included those in which the industry demanded a longer consultation period; pushed for the gathering of more research and evidence; or argued that the new regulation would be too difficult to implement administratively.

· Divide arguments included industry's various promises to develop and promote its own labelling (less stringent than the government's, and often confusing and difficult to interpret); direct attacks on the detail of the new labelling (e.g., on format and thresholds); as well as the direct lobbying with politicians behind closed doors aimed at stopping regulation.

· The deflect arguments included claims that warning labels are misleading and scared people; that regulation undermined individual responsibility; and that the government should not interfere with the people's right to make their own food choices. In addition, the arguments asserted that the nutrient-profile model was too strict, with the result that all foods would require warning labels; and that the proposed new labelling would restrict trade, damage the economy, and cause job losses.

· Finally, deny arguments insisted that there was neither enough evidence to support the new labelling scheme, nor any proof that the new scheme would be effective if adopted.

Results

We found 46 digital media articles that mentioned at least one of the keywords. Table 1 shows the number of arguments found in each category and gives examples of quotes found.

Of these, 10 were delay arguments. These appealed to the concept of amparo legal (legal protection of rights) in requesting a delay in implementation on the grounds that re-labelling products takes time. The articles revealed common arguments where the industry pushed for longer consultation periods; pushed for the collation and consideration of more research and

evidence; and argued that the new regulation would be too difficult to implement administratively and too costly financially.

Divide arguments insisted that the call for the new labelling is neither underpinned by scientific evidence, nor aligned with existing international trade practices. In addition, it is argued that small companies would not be able to keep up with the new norms; that such regulation would violate such legal rights as the right to intellectual property; and would have a negative effect on commerce.

Different elements of the labelling system were also criticised, notably that the proposed regulation does not allow comparison between products and does not differentiate between natural and added sugars. It was also found that the industry asked for less stringent labelling and proposed the implementation of a QR code to scan and make visible any product's nutritional information.

> **…it was widely claimed that the nutrient-profile model was too strict, and would result in the untenable situation of all foods being required to have warning labels.**

Deflection argued that the new warning labelling was confusing; that labels violate the right to information; actually provide less information to consumers; and would not, in any case, solve the health problem. We also found warnings that the labelling standard would result in damage to the industry as a whole and consequently to employment and to the economy; would involve violations of international trade agreements (such as United States-Mexico-Canada Agreement); and result in the creation of a 'black market' in food in the country.

In addition, some claimed that warning labels scare people and mislead them, while other arguments focused on the question of individual responsibility

and insisted that governments should not interfere with people's food choices because it violates their rights as consumers.

Furthermore, it was widely claimed that the nutrient-profile model was too strict, and would result in the untenable situation of all foods being required to have warning labels. (Denial arguments insisted there was no scientific evidence to substantiate the claims for the health benefits arising from improved labelling, and no evidence for their effectiveness.)

We found three arguments that used the deny tactic. They held that there was no scientific evidence about the impact of health benefits and no evidence about the effectiveness.

Finally, we also found five arguments that appealed to the COVID-19 pandemic as a reason for stopping the implementation of the labelling system. One industry chamber asked to stop the implementation of the warning label system, while the majority of chambers said that the situation was aggravated by the expenses and losses that came with the pandemic.

Table 1. Classification of arguments in the media challenging the Mexican warning label system (n=46)

4Ds	Number of arguments	Quotes from the media
Delay	10	**Quote 1:** '… initiated litigation in recent weeks because we believe that there are alleged violations of the right to information, the right to health and the way in which the process of the norm was carried out' **Quote 2:** 'We trust that the final legal resolution of the authorities will protect the rights to information, health and nutrition of Mexicans' **Quote 3:** 'NOM-051 must be discussed again to put the consumer first and the social cost that the norm will have' **Quote 4:** 'The Court … granted the provisional suspension of the development of the NOM-051, for which its publication and entry into force for the moment is stopped'
Divide	3	**Quote 1:** 'The new labelling does not allow comparison between different pre-packaged products' **Quote 2:** 'Warning labelling does not differentiate between the sugars that are naturally present in a product and those that were added in its elaboration' **Quote 3:** In order to have more information, 'an alternative is to put electronic codes (like QR) instead of the front-of-pack warning labels'

4Ds	Number of arguments	Quotes from the media
Deflect	30	**Quote 1:** 'Lack of solidarity from the health authorities in the midst of a pandemic' **Quote 2:** 'It will affect the economy, industry, commerce, services and employment' **Quote 3:** 'We will have lower income and job losses' **Quote 4:** 'The policy will generate a black market' **Quote 5:** 'An unnecessary interference' **Quote 6:** 'It clearly violates agreements such as the T-MEC' **Quote 7:** 'A healthier population will be achieved with better nutrition, adequate serving sizes and exercise' **Quote 8:** 'There is an inventory of 5 million products with a value of 20 billion pesos that are already labeled, and it is practically impossible to sell them in two months' **Quote 9:** Short period of implementation: 'More than five million products could be destroyed' **Quote 10:** 'Without considering the cost of the intellectual property of the brands, it will cost 6 billion pesos to make changes to the packaging' **Quote 11:** 'It will cost the sector more than 270 million dollars to change the labelling of products' **Quote 12:** 'We cannot discriminate any type of product … we need dietary orientation and physical activity'
Deny	3	**Quote 1:** '[T]he consumption of sugar products may not be the true solution to the serious public health problem of diabetes and obesity' **Quote 2:** 'We are in a campaign against sugar; it has been stigmatised for considering it guilty of obesity, diabetes, when other factors contribute to that' **Quote 3:** 'Businesses and consumers will be affected because the technical-scientific evidence, the cost-benefit of the measure, the impact on free competition, respect for international treaties, the rights of consumers to access truthful and clear information … [were] not rigorously [analysed]'

4Ds	Number of arguments	Quotes from the media
Use of COVID-19 pandemic	5	**Quote 1:** 'The Mexican industry was affected by the coronavirus' **Quote 2:** 'Due to Covid-19 it is onerous to implement and comply with the date for the entry into force of the new labelling' **Quote 3:** 'We request that in the face of the COVID-19 emergency and the still unknown economic and social impact, NOM-051 not be published' **Quote 4:** 'This year was complicated by COVID-19, and the Mexican beverage and processed food industry is having trouble complying with the front labelling of its products' **Quote 5:** 'We need to postpone measures such as the labelling that will be applied to food and beverages for at least three years, because these requirements can complicate supply in the midst of the health emergency due to COVID-19'

All quotes were transliterated from Spanish to English

Discussion

Our study found that the food industry used a variety of tactics to delay implementation of the new FOPL regulation. Of the five tactics analysed – delay, divide, deflect, deny, and COVID-19 – industry relied the most on deflection. Deflection sought to generate fear and doubt among the population about the possible adverse effects on the economy and on employment of the new legislation.

We also found that the food industry tried to delay implementation through litigation and recurso de amparo (appeal for protection under a constitutional right). Amparo allows for the protection of a human right over and above other laws and regulations. A successful appeal on the grounds of amparo would mean that the food industry could refuse the NOM-051 regulation.

To claim amparo, it contended that 'there were violations of the right to information, the right to health, and the way in which the process of the Standard was carried out'. Industry questioned the validity of the strategy on the grounds that no decline in obesity had been recorded in countries where the strategy had been implemented (using the example of Chile).

To date, we have noted more than 50 recurso de amparo filed by food and beverage companies seeking to avoid regulation (Forbes, 2020).

Similar tactics have been observed in other Latin American countries. When the Chilean government implemented a food-policy package designed to help prevent NCDs and included the regulation of marketing to children, school retail, and FOPL in this, the food and beverage Industry responded by expressing concern

about the impact the regulations would have on market outcomes (Corvalán et al. 2014). In fact, studies found that employment and average real wages were not affected by the new regulations (Paraje et al. 2022).

> ## 'States must also address childhood obesity and limit children's exposure to foods high in fat, sugar or salt, and to beverages high in caffeine or other substances with possible harmful effects'.

Similarly, the food industry's claim that it was 'unaware' of the consultations around the new labelling legislation in Mexico was found to be erroneous by UNICEF: industry representatives were present at more than 20 of the consultative meetings, and in fact submitted comments on the draft proposal. The NOM-051 consultation process was both democratic and transparent, one in which saw voluntary participation by all interested sectors, including the food industry. Other results in the UNICEF report, such as questioning the scientific evidence and affirming commitment to promoting healthy diets (Munguia et al. 2021), are in line with the ones found in this case study.

The food industry also tried to use the COVID-19 pandemic as a reason for delaying implementation of the new warning labelling system. Alleging a negative impact on the private sector, it requested a three-year extension. However, following the approval of the regulation, it was only able to obtain two smaller extensions. The first of these was for two months (to avoid sanctions on products that did not display the warning labels), and the second, also for two months (to incorporate a number of requirements, including updating nutritional information).

The nutrition-profile model implemented with the warning labelling system is fully supported by scientific evidence. The Mexican model was based on the cutoff points established by PAHO, following rigorous

standards of scientific evidence. The arguments by the food industries seeking to undermine this evidence simply cannot be taken seriously. Details about the approval process and the evidence behind the decision are publicly available.

With regard to human rights, it is essential to consider the nature of the rights of children. Here, the state has the obligation to ensure protection for the best interests of the child, including the right to health. According to Trade-Related Aspects of Intellectual Property Rights (TRIPS 1994), there has to be flexibility regarding regulations concerned with public health interests: public health concerns prevail over commercial interests.

In addition, the Committee on the Rights of the Child, in General Comment No. 15, states that the child has the right to enjoy the highest possible level of health (article 24), and stipulates that 'States must also address childhood obesity and limit children's exposure to foods high in fat, sugar or salt, and to beverages high in caffeine or other substances with possible harmful effects'.

This case-study deals only with internet-based media; it does not include television or radio. Analysis of them is very likely to reveal an even greater number of attempts to impede the approval and implementation of the new warning labelling system in Mexico. In addition, certain media have the tendency to defend or attack the food and beverage chambers, due to their deals, and businesses, or due to shared ownership or competition with other companies, so the current results are to be interpreted as necessarily partial rather than complete in terms of total media coverage.

> ## Analysis of them is very likely to reveal an even greater number of attempts to impede the approval and implementation of the new warning labelling system in Mexico.

Conclusion

The food and beverage industry consistently made use of false rather than evidence-based arguments to delay, divide, deflect, and deny the implementation of the new FOPL system. It has done so despite the fact that this system has proved to be effective in reducing over-consumption of critical nutrients.

The most prevalent tactic was deflection. Various counterarguments were put forward: the threat to the economy; blaming the individual rather than considering the reality of the obesogenic environment (understood as the sum of influences that the surroundings, opportunities, and conditions of life have on promoting obesity in individuals or populations). The repeated appeal to COVID-19 also shows the industry's willingness to use a variety of tactics to challenge the approval and implementation process.

Our hope is that the information and analysis provided in this document can help key actors and stakeholders both anticipate and address the likely pushback by the food industry during the public processes involved in the approval of healthy food policy regulations.

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