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perspectives on
**marketing,
self-regulation,
&
childhood obesity**

**A Report on a Joint Workshop of
the Federal Trade Commission &
the Department of Health & Human Services**

April 2006



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ACRONYMS

AAAA	American Association of Advertising Agencies
AAF	American Advertising Federation
ABA	American Beverage Association
ACFN	American Council for Fitness and Nutrition
ADA	American Dietetic Association
ANA	Association of National Advertisers
CARU	Children's Advertising Review Unit
CBB	Council of Better Business Bureaus
CCFC	Campaign for a Commercial Free Childhood
CDC	Centers for Disease Control and Prevention
CIFC	Center for Informed Food Choices
CSPI	Center for Science in the Public Interest
CSS/GES	Collier Shannon Scott/Georgetown Economic Services
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FNS	USDA Food and Nutrition Service
FTC	Federal Trade Commission
HHS	Department of Health and Human Services
GAO	Government Accountability Office (previously General Accounting Office)
GMA	Grocery Manufacturers of America
ICC	International Chamber of Commerce
IOM	Institute of Medicine of the National Academy of Sciences
NAD	National Advertising Division of the Council of Better Business Bureaus
NARB	National Advertising Review Board
NARC	National Advertising Review Council
NIH	National Institutes of Health
PBH	Produce for Better Health Foundation
PHAI	The Public Health Advocacy Institute
PMA	Promotion Marketing Association
USDA	United States Department of Agriculture

EXECUTIVE SUMMARY

Childhood obesity rates in the United States have increased dramatically over the past two decades, posing serious health risks for children. In July 2005, the Federal Trade Commission (“FTC”) and the Department of Health and Human Services (“HHS”) (collectively “the agencies”) held a public workshop to consider what the private sector can and should do to help lower childhood obesity rates. The workshop reviewed current food marketing practices and examined the actions that the food industry and media are taking to create and market healthier foods to children and to encourage positive changes in children’s diets and health. It also examined current self-regulatory efforts governing food marketing to children. Workshop participants expressed both praise and criticism of existing industry practices and self-regulatory efforts. Some also offered suggestions for ways that industry can build on current efforts and take new steps to tackle the childhood obesity problem.

Current Food Marketing to Children

The workshop found that food companies market their products to children using a wide variety of approaches. Traditional advertising in television and print media represents only one method of marketing food to children. Food marketers also reach children through packaging, labeling, promotional efforts like premiums and contests, product placement in movies and video games, branded advergames, licensing of popular children’s characters, and other tie-ins with children’s movies and television programs. The use of these marketing techniques appears to be increasing.

Some workshop participants raised the concern that all of these techniques for marketing food to children are contributing to increasing rates of childhood obesity. There was wide agreement at the workshop that many factors contribute to childhood obesity. The purpose of the workshop was not to determine whether or to what extent food marketing, or any other single factor, has contributed to the dramatic rise in childhood obesity rates. Workshop participants generally agreed that, regardless of the causes of childhood obesity, responsible food marketers can use a wide range of methods to play a positive role in improving children's diets. There also was recognition that consumers expect industry to help families improve their diets and lifestyles. Workshop participants acknowledged that consumers not only want more choices and more nutrition information, they also want industry to market responsibly. The workshop explored ways to encourage forms of marketing that make a positive impact on children's health.

Some Recent Changes in Food Marketing Practices

Individual food companies at the workshop outlined changes in their marketing practices made to respond to rising childhood obesity rates. Many of them have introduced innovative products that are lower in calories and more nutritious. Some food companies have also modified their packaging to encourage portion control and make nutritious foods more convenient for parents and more appealing to children. Several of the companies participating in the workshop indicated that they are using labeling icons and seals to help consumers identify more nutritious, lower-calorie foods. Many food companies also reported that they are emphasizing nutrition and healthy lifestyle messages in advertising, using marketing techniques popular with children, such as character licensing, to promote good nutrition, and engaging in

nutrition and fitness outreach programs in local communities and schools. Finally, a few food companies are limiting their child-directed advertising to products meeting specific nutrition and calorie standards.

These responses to childhood obesity, however, are only in their nascence. Consumer advocates and public health groups suggested that new offerings and reformulations do not go far enough and are still outweighed by poor nutritional offerings. They also expressed concern about whether multiple nutrition icons would be confusing to consumers and about whether food companies could be relied on to be persuasive or accurate with nutrition messages that might be at odds with some of the products they market. Participants were divided on the question of whether it is necessary or feasible to limit children's marketing to foods that meet certain nutritional standards.

After review of these examples of positive industry initiatives, and the suggestions and criticism of those outside of industry, the agencies recommend that food companies take the following actions:

- Intensify their efforts to create new products and reformulate existing products to make them lower in calories, more nutritious, more appealing to children, and more convenient to prepare and eat;
- Help consumers control portion sizes and calories through smaller portions, single-serving packages, and other packaging cues;
- Explore labeling initiatives, including icons and seals, to identify lower-calorie, nutritious foods clearly and in a manner that does not mislead consumers;

- Review and revise their marketing practices with the goal of improving the overall nutritional profile of the foods marketed to children, for example, by adopting minimum nutritional standards for the foods they market to children, or by otherwise shifting emphasis to lower-calorie, more nutritious products; and
- Generally explore ways to improve efforts to educate consumers about nutrition and fitness, with simple and effective messages.

Schools

Many food companies engage in a variety of marketing activities and sales in schools. Government studies have revealed that many of the foods sold competitively in schools, apart from the school meals programs, are high in calories and low in nutrition. To address concerns that have been raised about school marketing and sales, some food companies have decided to limit their marketing activities and restrict the foods they sell to more nutritious, lower-calorie products. The Institute of Medicine is currently developing nutritional standards for foods sold in schools as guidance for school districts and the food industry. The agencies recommend that all food companies review and revise their policies to improve the overall nutritional profile of the products they market and sell in schools.

Public Service Campaigns and Other Media Initiatives

Media and entertainment companies, like food companies, are changing their practices in response to rising childhood obesity rates by incorporating health and nutrition messages into programming and creating public education campaigns. The agencies recommend that, with broad participation from other stakeholders, the media and entertainment companies continue to

develop and disseminate educational messages about nutrition and fitness that are simple, positive, and repeated consistently across various platforms and venues.

The entertainment industry has also begun to capitalize on the popularity of its television and movie characters to promote children's health. At the same time, critics point out that these characters are often used to sell foods that are high in calories and low in nutrition. The agencies recommend that companies review and revise their licensing of children's television and movie characters to foster promotion of more nutritious, lower-calorie foods.

Marketing to Racial/Ethnic Communities

The workshop also examined marketing of foods to certain racial and ethnic populations with a higher prevalence of childhood obesity. Addressing obesity in the Hispanic and African American communities is critical to decreasing the overall incidence of childhood obesity. Most childhood obesity initiatives to date have been directed at the general population. The agencies recommend that food companies make a concerted effort to include, as part of their marketing of more nutritious, lower-calorie foods, promotions that are tailored to specific racial and ethnic minority populations in which childhood obesity is more prevalent. The agencies also recommend that food companies, the media, and entertainment companies tailor their public education programs and other outreach efforts to promote better nutrition and fitness to these racial and ethnic minority populations.

Industry-Wide Self-Regulation

In addition to the actions of individual companies, the workshop examined self-regulatory efforts to ensure responsible food marketing to children. Participants focused on the

Children’s Advertising Review Unit (“CARU”) of the Council of Better Business Bureaus, Inc. (“CBBB”) and its guides requiring that advertising to children be truthful, accurate, and developmentally appropriate. Several suggestions were made at the workshop for expanding and enhancing the role of CARU to make it more effective in addressing food marketing to children, including a formal proposal by the food industry. These suggestions included updating and expanding the scope of CARU’s authority to more explicitly cover newer forms of marketing, like the Internet and interactive games; ensuring that CARU has adequate resources and staff; and making the self-regulatory process more accessible to the public. Some also called for CARU to establish nutritional standards for foods marketed to children.

Although the CARU Guides are a good foundation for industry self-regulation, the agencies believe the guides should be expanded and their enforcement enhanced. The National Advertising Review Council (“NARC”), which sets policy and direction for CARU, has already taken some initial steps to address suggestions made at the workshop. As part of this review process, NARC and the CBBB recently formed a self-regulatory working group and have announced that the group intends to meet with various stakeholders as it develops proposals to modify the CARU Guides and to seek public input on any recommendations it makes. The agencies recommend that, as part of this effort, the CBBB/CARU working group take the following actions, as soon as practicable:

- Expand the CARU advisory board to include additional individuals with expertise in the various fields related to childhood obesity, such as nutrition, children’s health, and developmental psychology;

- Allow parents and others to file complaints with CARU and make decisions more readily available to the public online; and
- Evaluate and determine whether CARU's staff and resources are sufficient to monitor and enforce adequately the CARU guides, in light of any changes made in response to the recommendations set forth in this report.

The agencies also recommend that, in addition to these actions, the CBBB/CARU working group also needs to consider a wide range of additional options as to how the CARU Guides could be modified to assist in combating childhood obesity. Among other things, the agencies recommend that the industry address the following issues:

- The scope of marketing activities covered by self-regulation, other than traditional advertising;
- The feasibility of minimum nutritional standards for foods marketed to children or other measures to improve the overall nutritional profile of foods marketed to children;
- The feasibility of an independent third-party seal or logo program identifying more nutritious, lower-calorie foods;
- Whether the use of product placement of foods is appropriate in certain media; and
- What additional sanctions or other measures should be incorporated into the CARU Guides to deter violations, especially repeated violations.

The agencies believe that improvements in each of these areas would be beneficial and that the CBBB/CARU working group should establish a process that is as open and transparent as possible, with broad participation by stakeholders to resolve these issues.

Report on Food Marketing

The workshop record indicates that food companies market their products to children through a variety of means, including television, radio, print and Internet advertising, packaging, promotional events, in-store marketing, and product placement. Preliminary research by the FTC staff suggests that children today are exposed to fewer food advertisements on television than in the past. There is less information, however, about the extent of other forms of marketing. A recently completed evidentiary review and analysis of food marketing and children's diets and health by the Institute of Medicine's Committee on Food Marketing and the Diets of Children and Youth (the "IOM Committee") noted significant gaps in the research. In particular, the IOM Committee's report notes that much of the relevant marketing research and data are proprietary and were not available to Committee members. It also noted that peer-reviewed literature on the role of food marketing in the diets of children is largely limited to television advertising and has not explored other marketing venues and techniques.

The FTC was recently directed by Congress to conduct a comprehensive food marketing study that will look at the full range of food marketing activities and expenditures directed at children and adolescents, drawing on both publicly available information and, as necessary, proprietary information from food companies. When completed, this study should provide a better understanding of the full extent and variety of techniques used to reach children. As described above, however, the agencies believe that there are many positive steps that individual food companies, and the private sector as a whole, can take now. The seriousness of the childhood obesity problem warrants such immediate action.

Conclusion

The agencies believe that the discussions of food marketing and childhood obesity at the workshop have created momentum to enhance self-regulation and industry practices that promote better children's diets. The agencies will monitor future developments in food marketing to children and childhood obesity and will closely evaluate the changes that the CBBB/CARU working group makes to the self-regulatory process, including assessing whether these changes satisfactorily address the specific recommendations in this report. After allowing time for changes to be implemented, one or both of the agencies will issue a follow-up report assessing the extent to which positive, concrete measures have been implemented and identifying what, if any, additional steps may be warranted to ensure adequate progress is being made to address childhood obesity.

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**Federal Trade Commission and Department of Health & Human Services
Workshop Report:¹**

I. Introduction

Obesity² among children in the United States is increasing rapidly. Since 1980, obesity rates have tripled among adolescents (ages 13 to 17) and doubled among younger children, with recent data indicating that 16% of children ages 6 to 19 years are obese.³ In addition, not only have obesity rates increased, but the heaviest children are markedly heavier than they have been in the past.⁴ Childhood obesity rates also are much higher in certain minority populations, particularly in the African-American and Hispanic communities, than in the general population.⁵

Childhood obesity is a significant public health problem,⁶ because it raises serious and long-term disease risks. About 60% of obese children ages 5 to 10 years have at least one additional cardiovascular risk factor, such as elevated cholesterol, elevated insulin, elevated glucose, or elevated blood pressure. Twenty-five percent of obese children have two or more of these risk factors.⁷ The health consequences of childhood obesity are compounded because it often persists into adulthood.⁸ Obesity in adults is associated with diseases such as atherosclerosis, hypertension, cardiovascular disease, stroke, type II diabetes, hyperlipidemia, and arthritis. In addition to decreasing quality of life, obesity also has economic consequences. Recent estimates suggest that the total cost to Americans of obesity and associated health conditions was \$117 billion in 2000.⁹

The federal government has undertaken many initiatives to reverse rising obesity rates,

particularly among children. Because parents exercise control over many of the food choices of their children, especially younger children, providing nutrition and other information about foods to parents is well-recognized as a critical means of helping them make better decisions.¹⁰ Last year, HHS, in combination with the United States Department of Agriculture (“USDA”), issued the 2005 Dietary Guidelines for Americans, which emphasize balancing calorie consumption with physical activity.¹¹ As part of the Food Guidance System, USDA has also created educational materials for children. “My Pyramid for Kids” includes an interactive computer game, tips for families, and classroom materials designed to help children ages 6 to 11 make healthy eating and physical activity choices.¹² Also in 2005, the National Institutes of Health (“NIH”) launched “We Can,” a national nutrition and fitness education program focusing on children ages 8 to 13. The program provides parents with information that encourages healthy eating and a more active lifestyle.¹³

Some of these initiatives are undertaken in partnership with non-governmental organizations. For example, the “*VERB. It’s What You Do*” campaign is a national, multi-cultural social marketing campaign coordinated by the Centers for Disease Control and Prevention (“CDC”). The campaign combines paid advertising, marketing strategies, and a variety of partnership efforts to reach young people ages 9 to 13.¹⁴ Also, in October 2004, HHS signed a Memorandum of Understanding (“MOU”) with the Girl Scouts of America to educate girls about obesity, and under the MOU the Food and Drug Administration (“FDA”) is working with the Girl Scouts on healthy living initiatives.¹⁵

Several other government initiatives target obesity in the general population with

nutrition and health messages for the whole family. In 2003, for instance, HHS launched the “Steps to a HealthierUS” initiative in support of President Bush’s HealthierUS goal of helping all Americans live longer, better, and healthier lives. This wide-ranging initiative identifies and encourages modest behavior changes, like taking the stairs instead of the elevator, which can yield significant results over time.¹⁶ In addition, the FDA has an initiative to make food labeling a more effective tool for managing calories. The FDA is considering modifying the food labeling regulations to give more prominence to calories and to revise its approach to serving size information. The FDA is encouraging marketers to modify their labels voluntarily while these proposed regulatory changes are under consideration.¹⁷ In addition, the FDA is promoting better access to calorie and nutrition information in restaurants. The agency has funded a Keystone National Dialogue¹⁸ to seek consensus-based solutions to specific aspects of the obesity problem related to away-from-home foods, which account for about 46% of the total food budget of Americans and a significant portion of total calories consumed.¹⁹ In connection with this effort, the FDA has been encouraging restaurants to voluntarily provide consumers with caloric information at point of purchase, and encouraging consumers to ask for this information.²⁰

The FTC’s efforts to combat obesity include aggressive law enforcement actions against those who make false or misleading claims in advertising for weight loss products. Over the past decade, the Commission has brought over 100 cases targeting deceptive weight loss claims made for a variety of products and programs and has been successful in obtaining strong remedies in these cases.²¹ The FTC recently has supplemented its traditional law enforcement activity by enlisting the assistance of the media to screen and reject weight loss ads with clearly deceptive

claims.²² These media screening efforts appear to be reducing the prevalence of the most deceptive claims for weight loss products.²³

Despite these and other government initiatives, childhood obesity remains a serious public health problem. Some have contended that food marketing (including food advertising) is responsible for the recent increases in childhood obesity, and that, therefore, the government should ban or restrict food marketing to children. The FTC's experience in the 1970's with proposals to regulate food advertising on television directed to or seen by children²⁴ suggests that it would be difficult for the government to develop advertising restrictions that are practical and effective. In addition, tailoring such restrictions to conform to First Amendment constraints could present significant challenges.²⁵

Instead, the FTC and HHS have decided to focus on identifying ways the government can encourage industry to harness its marketing power to generate solutions to childhood obesity.²⁶ On July 14 and 15, 2005, the agencies convened a public workshop to discuss steps that industry is taking and should take to decrease childhood obesity.²⁷

The goal of the workshop was to "identify some concrete steps that industry, government, and public policy groups can take together to make progress against childhood obesity."²⁸ The workshop provided the food, beverage, and restaurant industries²⁹ and the media and entertainment industries with an opportunity to describe the changes they have made in their marketing and other practices to improve children's health,³⁰ and other interested parties with a chance to discuss the merits of these changes.³¹ It prompted a critical examination of current self-regulatory standards for the marketing of foods to children.³² This report summarizes the

issues discussed at the workshop, draws conclusions, and makes recommendations regarding changes in company practices and industry self-regulation that may advance the common goal of decreasing childhood obesity.³³ It generally is based on the record of the workshop, including the presentations and discussions of panelists and other presenters and written comments submitted to the agencies, although it also notes some important developments that have occurred since the workshop. (A copy of the workshop agenda, including a list of panelists and presenters is attached as Appendix A.) In preparing this report the staff of the FTC and HHS did not attempt to look beyond the record of the workshop or to conduct their own research or literature review on food marketing and childhood obesity.³⁴

II. Overview of Food Marketing to Children

Food companies market their products to children using a wide variety of approaches. Traditional advertising in television and print media represents only part of marketing food to children.³⁵ Food marketers also reach children through packaging, labeling, promotional efforts like premiums and contests, product placement in movies and video games, branded adver gaming, licensing of popular children's characters, and other tie-ins with children's movies and television programs.³⁶ With the increasing use of tie-ins and character licensing by the food industry, and the resulting association between these characters and specific food brands, some have argued that children's movies and programs may have become, themselves, an indirect form of marketing food to children.³⁷

Children and adolescents are an important market segment. They not only have

significant spending power of their own,³⁸ but they also influence the purchases of their parents and are the adult consumers of the future. The Institute of Medicine of the National Academy of Sciences (“IOM”) has cited to research from the 1990s estimating children’s purchasing influence rises with age, from \$15 billion per year for children ages 3 to 5 years, to \$90 billion per year for teens ages 15 to 17.³⁹ Much of that purchasing influence relates to food. According to one estimate, annual sales of foods to children exceeded \$27 billion in 2002.⁴⁰

It has been estimated that, because of children’s impact on purchasing behavior, the food industry spent \$10 to \$12 billion in 2002 to reach them.⁴¹ A substantial proportion of this amount is spent on a variety of promotions, contests, sweepstakes, and similar activities.⁴² Food companies engage in promotional spending to draw the attention of their customers, including children, to specific products in the grocery store. For instance, food companies often pay a premium to grocery stores or other retailers to have their products placed on lower shelves, end-caps, or at check-out – all locations accessible to children.⁴³ Food companies also include prizes with their foods to make them more appealing to children. McDonald’s, for example, has included Hot Wheels toy cars, Barbie dolls, and toys tied to Disney movies in its Happy Meals.⁴⁴ The Kellogg Company also has run an online promotion called “Magic by the Million” in which consumers enter the UPC symbol from a package of Keebler cookies or crackers into an on-line form to get the chance to win a Keebler cookie clip or a coupon for Keebler cookies.⁴⁵

Another form of food promotion involves linking foods to popular children’s characters or associating food brands with children’s books, toys, and clothing. For example, Mattel sells a Barbie doll that wears a Jell-O Tee-shirt, as well as another doll dressed in a McDonald’s

restaurant uniform;⁴⁶ Scholastic publishes The M&M Counting book;⁴⁷ and Coke-branded toys include checker sets and cars purportedly aimed at children as young as 4.⁴⁸

Tie-ins to popular children's movie and television characters may allow marketers to leverage children's frequent exposure to and familiarity with those characters. Kraft, for example, markets its Macaroni & Cheese in the shape of popular kids' characters, such as Super Mario Brothers, Flintstones, Bugs Bunny and Friends, Rugrats, Pokémon, Blues' Clues, Scooby Doo! and SpongeBob SquarePants.⁴⁹ Use of such characters may allow food companies to spend substantially less on advertising in television and other media.⁵⁰ For example, media spending for General Mills' Betty Crocker Fruit Snacks dropped from \$6.6 million in 1998 to \$26,000 in 1999, after General Mills, as part of a deal with Walt Disney, Co., introduced Winnie-the-Pooh, Mickey Mouse, and Disney Princess-based fruit snacks.⁵¹

Some workshop participants also emphasized the increased use of paid product placement in family programming on television,⁵² as well as in movies, DVDs, and video games, as another technique used by food marketers. For example, in the *Spider-Man* movie, the protagonist used his web-spinning ability to retrieve a can of Dr. Pepper.

Food companies also spend significant amounts on packaging designed to appeal to children.⁵³ Food manufacturers use a variety of methods to make their packaging stand out to children, such as through the extensive use of color, the use of characters from popular movies and television shows, and the inclusion of toys.⁵⁴ Companies may also alter the size⁵⁵ and form of packaging to appeal to children. For instance, some ketchup bottles have been designed so that they are easier for children to squeeze.⁵⁶

Food companies also spend substantial amounts on public relations to promote their corporate images and brand identities.⁵⁷ They donate money to schools in the form of corporate grants and gifts, distribute corporate-sponsored educational and teacher training materials, and conduct corporate-sponsored incentive programs.⁵⁸ Food companies also sponsor youth organizations, awards, scholarships, and healthy lifestyle programs.⁵⁹

Finally, in addition to these marketing techniques, food companies spend significant amounts on traditional advertising to children.⁶⁰ Companies use a variety of advertising media to persuade parents and children to purchase their products, with television being the predominant choice. One advertising magazine has reported that, of the amount spent on advertising food to all consumers, 70% is spent on television advertising, 26% is spent on print advertising, 2% is spent on radio advertising, and slightly more than 1% is spent on online advertising.⁶¹ Although these statistics are for food advertising to all consumers, not just children, they are consistent with the consensus of workshop participants that television advertising is the most visible form of traditional advertising that food companies use to reach children, as it has been for decades.

Workshop participants discussed whether the average number of television ads, including food ads, that children view has changed over the past three decades. A number of studies relating to this topic have been conducted with varying results.⁶² At the workshop, Dr. Pauline Ippolito, Associate Director for the FTC's Bureau of Economics, presented preliminary results from a study on children's television ad exposure. She noted that, except for several studies in the 1970s, estimates of children's advertising exposure have been based on analyses of small subsets of programming. By contrast, the Bureau of Economics analyzed data on all

programming monitored by Nielsen. The study analyzed Nielsen Monitor-Plus/Nielsen Media Research data on advertising viewed by children during four “sweeps” weeks in 2003-2004,⁶³ and compares it to similar analyses conducted in the late 1970s. The measures of ads viewed in 1977 are based on three prominent studies.⁶⁴

The Bureau of Economics’ preliminary analysis of results suggests that children’s exposure to paid advertisements on television has declined from the late 1970s. Although children (ages 2-11) saw a total of approximately 22,000 ads per year in 1977 and an estimated 23,530 ads per year in 2004, the proportion of ads that were public service announcements and promotions for other television shows was considerably larger in 2004 than in 1977. Children saw an average of 17,507 paid ads in 2004, down from 20,000 in 1977.

The Bureau of Economics’ preliminary analysis also suggests that children’s exposure to television ads for foods has declined. On average, children saw nearly 5,000 nationally aired food ads on television in 2004. Children saw fewer food ads in 2004 than in 1977, but food ads continue to constitute a substantial percentage of the ads on children’s shows⁶⁵ and family shows. According to the Bureau of Economics’ analysis, the decline in food ads was offset primarily by increases in advertising for movies, DVDs, video games, computer games, and promotions for television programming.⁶⁶

In addition to television advertising, online advertising of foods to children received significant attention at the workshop. Over the past decade, children have replaced some of their television viewing with time spent with other video media such as video games and the Internet.⁶⁷ Food companies have responded by creating websites with a variety of features that

appeal to children.⁶⁸ Specifically, these websites may include interactive games that feature particular food products (sometimes referred to as “advergaming”), contests, music, viral marketing in the form of e-mailing cards to friends, television commercial clips, sweepstakes, recipes, and downloadable wallpaper and screen savers.⁶⁹ Online advertising likely accounts for a minimal proportion of the total amount spent advertising food to children – reportedly slightly more than 1% of total advertising dollars spent on food in 2004.⁷⁰ On the other hand, some workshop participants cautioned that such expenditure data may understate the effect of online marketing to children, because children can become immersed in these websites and the activities available on them.⁷¹

Some have raised the concern that all of these techniques for marketing food to children are contributing to increasing rates of childhood obesity. There was wide agreement at the workshop that many factors other than marketing contribute to childhood obesity.⁷² The purpose of the workshop was not to determine whether or to what extent food marketing, or any other single factor, has contributed to the recent and dramatic rise in childhood obesity rates.

Workshop participants generally agreed that, regardless of the causes of childhood obesity, responsible food marketers can use a wide range of methods to play a positive role in reversing obesity trends.⁷³ There also was recognition that consumers expect industry to help families improve their diets and lifestyles. Workshop participants acknowledged that consumers not only want more choices and more nutrition information, they also want industry to market responsibly. The workshop explored ways to encourage forms of marketing that make a positive impact on children’s health.⁷⁴

III. Food Industry Initiatives to Improve Children's Diets and Health

The record of the workshop shows that food companies are responding to rising childhood obesity rates with a variety of product changes and marketing initiatives. Product innovations include new product introductions, product reformulation, and changes in serving sizes and packaging. On the marketing side, companies report using labeling, advertising, and other marketing techniques to promote these healthier or lower-calorie products and to provide nutrition and health information to consumers. Some companies state that they also are limiting where and what they market to children. For instance, a number of companies have adopted policies limiting marketing in schools. Others are shifting much of their children's advertising to products meeting certain nutritional standards. Several companies are also engaging in outreach and educational programs in local communities and in schools.

Some members of the food industry emphasized that companies need to preserve some latitude as they experiment with how to make healthier products that will be successful in the marketplace. Market success, they contend, will spur competition to create more nutritious or lower-calorie products. They also stressed that companies need to experiment with different ways to market nutrition through labeling, advertising, and other marketing techniques. By trying different approaches, companies will learn what resonates best with parents and children.

It is not clear what impact these efforts to change products and marketing will have on childhood obesity. Some participants documented the success of new product lines that in turn are spurring additional product development. There was also some evidence indicating positive

changes in consumer awareness and eating habits due to industry efforts, but this evidence was limited.

Other participants, however, expressed concern about the continuing imbalance between the extensive marketing and sale of foods of poor nutritional quality to children and the more limited efforts by industry and others to promote children's health. They argued further that, in some instances, reformulated products are not necessarily healthier, because they remain high in sugar or have other unhealthy attributes. These participants also expressed concern about the usefulness of nutrition seal programs used to promote healthier and lower-calorie products, questioned the effectiveness of company policies that purport to limit advertising to children, and contended that company-sponsored outreach programs on health and nutrition are potentially misleading and may be just another form of marketing to children.

A. Products and Packaging

Consumers indicate that they want nutritious and low-calorie options, and the marketplace appears to be responding to that demand.⁷⁵ According to a survey by the Grocery Manufacturers of America ("GMA") of industry's self-reported health and wellness initiatives, new and recently reformulated offerings represent about 30% of the average supermarket offerings.⁷⁶ Product and packaging innovation includes new products that are lower in calories or more nutritious; products that have been reformulated to reduce or eliminate sugars or unhealthy fats; portions that are smaller; and packaging that offers smaller serving sizes.⁷⁷ All can provide direct benefits toward reducing obesity.

The challenge for food companies is to create lower-calorie, more nutritious products that will be successful with consumers. Although consumers say they want healthy options, according to industry participants, consumers do not always choose these options when they are made available. The restaurant industry reports, for example, that larger portions in restaurants connote value and consumers sometimes reject reduced portion sizes as poor value.⁷⁸ To be a market success, lower-calorie, more nutritious offerings also need to taste good and offer convenience.⁷⁹ In the case of children's products, industry participants stated that it is equally important that their products be seen as fun or "cool."⁸⁰ As one participant noted, if a product is nutritious, but not good tasting and fun, it stays in the cupboard and does not improve children's diets.⁸¹

1. New Products and Reformulations

Several companies reported on their efforts to create new products that are lower in calories or more nutritious. Coca-Cola, for example, indicated that it has introduced 15 new low-calorie or calorie-free beverages in the past year and that its fastest growing portfolio of brands within the company is bottled water.⁸² Similarly, Pepsi indicated that 50% of its new product development will be products that meet the company's "Smart Spot" nutritional standards, and Kraft reported that much of its new product growth is in the category of products meeting its "Sensible Solutions" nutrition standards.⁸³ Many of the industry's new product offerings are specifically targeted to children. McDonald's now offers apple slices and low-fat milk as a substitute for french fries and soft drinks in its Happy Meals.⁸⁴ Kellogg's has introduced new

whole grain children's cereals, such as Kashi Mighty Bites.⁸⁵

Companies are also reformulating existing products to make them lower in calories and more nutritious. The most common reformulations involve reducing or eliminating saturated fat and trans fat, decreasing calories, increasing whole grain content, or reducing sugar content.⁸⁶ McDonald's, for instance, pointed to its introduction of its 100% white meat chicken nuggets.⁸⁷ Kellogg's noted that it has reformulated its Frosted Flakes and Fruit Loops cereals to reduce sugar content, introduced a low-fat version of its Nutri-Grain waffles, offered sugar-free varieties of its cookies, and removed trans fat from its Rice Krispies Treats.⁸⁸ With their new product development, Kraft and Pepsi cited efforts to create reformulated products that conform to internal nutritional standards so that more of their overall portfolios will qualify for their healthier Sensible Solution and Smart Spot marketing initiatives, respectively.⁸⁹ General Mills also has implemented an initiative to convert all of its cereal products to whole grain.⁹⁰

To make it more likely that these new products will succeed, companies plan to actively advertise and promote them with campaigns that focus on good nutrition. Kraft, for example, has indicated that its advertising to children of its Sensible Solution products will highlight nutrition whenever practical.⁹¹ Pepsi is planning an educational campaign founded on its Smart Spot program to teach consumers simple tips for improving diet and health.⁹²

Although participants recognized the value of offering healthier food options in the marketplace, some criticized industry efforts as inadequate or even deceptive in certain instances. They suggest that the changes do not go far enough and are still outweighed by the poor nutritional offerings on the market.⁹³ Some of the reformulated products, these participants

contend, are promoted heavily for their nutritional and health benefits and yet continue to be high in sugar or have other characteristics that these participants believe are unhealthy. For example, the Center for Informed Food Choices (“CIFC”) contended that most of the General Mills whole grain cereals marketed to children, such as Reese’s Puffs, Cookie Crisps, Cocoa Puffs, and Lucky Charms, continue to contain substantial amounts of sugar (sometimes as the primary ingredient) and little fiber. CIFC notes that whole grain Cocoa Puffs, for instance, contains 13 grams of sugar and only one gram of fiber.⁹⁴

2. Packaging

Companies also are using packaging technologies in a variety of ways that may help improve consumer diets. Most companies reported making changes to both multi-serving and single-serving packaging to help consumers manage portions and calorie intake.⁹⁵ General Mills, for example, has introduced 100-calorie packs for some of its snack food products, like popcorn.⁹⁶ To help with portion control, General Mills also has redesigned packaging for products like frozen dinner rolls to allow consumers to bake only one or two at a time.⁹⁷ Pepsi, Coca-Cola, Kraft, Kellogg’s, and many other companies also are moving to portion-controlled packages, including smaller, more child-appropriate sized beverages and snacks.⁹⁸

Other packaging innovations include making nutritious foods more fun and appealing to children. For example, McDonald’s repackaged its milk, changing from traditional wax cartons to brightly decorated and easily opened small plastic jugs, with the reported result that milk sales for the chain doubled.⁹⁹ General Mills claims to have been similarly successful with its Go-Gurt

yogurt in a squeezable tube, to which it attributes a substantial increase in yogurt consumption by children ages 6 to 12.¹⁰⁰

Finally, processing and packaging technologies are allowing companies to make fruit and vegetables more convenient for consumers.¹⁰¹ General Mills, for example, is currently testing single-serving microwavable bowls of vegetables for both adults and children, and it reports a positive consumer response to these products.¹⁰² Also, Dole Food Company has introduced its single-serving size Fruit Bowls containing bite-sized fruit pieces that do not require refrigeration.¹⁰³

B. Labeling, Advertising, and Other Promotions

In addition to product innovations, companies are using marketing to educate and motivate parents and children to eat better – through labeling, advertising, community-based outreach programs, and other means. Some companies now place icons or seals on their product packaging to identify foods that satisfy certain nutritional criteria. Companies also have adopted policies restricting their advertising to children; re-focused their advertising messages on nutrition and healthy lifestyles; and sponsored community outreach programs, particularly in schools, to promote healthy eating and exercise habits.

Regardless of the marketing method companies use to promote healthy eating, there was general agreement about the content of messages that resonate best with families. Many industry participants agreed that, for both parents and children, messages need to be simple and positive. Consumers, the companies suggested, want a clear signal to help them make better diet choices,

without too much information or detail.¹⁰⁴ These participants further stated that parents in particular do not respond well to negative messages warning against unhealthy nutrients or messages that create guilt.¹⁰⁵ Likewise, they submitted that children do not respond well to lectures about nutrition. These participants said that messages that resonate best with children focus on having fun, being cool, having energy, and doing well in school and in sports.¹⁰⁶ Several participants emphasized the importance of consistent messaging throughout the marketplace and the need for constant, repeated exposure.¹⁰⁷ At the same time, some participants stated that diet and health messages may need to be tailored to specific ethnic groups and specific ages to have the greatest impact.¹⁰⁸

1. Labeling

A significant trend in labeling is the development by some food companies of icons or seal programs. Marketers use these labeling tools as a quick and easy way to help consumers identify the most nutritious products in a brand line or to convey a nutritional benefit of a product.

In the past, seals typically have been issued by independent nonprofit and public health organizations, like the American Heart Association, to identify foods that meet certain health criteria. But many companies are now developing proprietary seal programs for use on their own products. Kraft and Pepsi also have both implemented seal programs for their healthier products. Kraft's "Sensible Solution" labeling program uses a flag on foods that meet specific "better-for-you" criteria within a category of products. The criteria for this program, independently developed by Kraft, include limits on, or reductions in, calories, fat, sugar, and sodium, the

presence of beneficial nutrients like calcium or fiber, and the delivery of a functional benefit like heart health.¹⁰⁹ Pepsi has a similar seal program using a “Smart Spot” green dot on packaging to identify its “good-for-you” and “better-for-you” products. In deciding which products qualify for its Smart Spot seal, Pepsi uses nutritional criteria based on limits on, or reductions in, saturated fat, trans fat, cholesterol, sodium, and added sugar.¹¹⁰ Kellogg’s has also developed nutrition icons for its cereal packaging,¹¹¹ and General Mills has created a “Goodness Corner” icon system that appears on the front of its cereal boxes.¹¹² The icons identify particular nutritional benefits of the product, such as “good source of calcium.” These benefits are founded, in part, on FDA criteria and guidelines for nutrients and in part on the companies’ own criteria.

Food companies that use nutrition icons or seals on product packaging report that their programs have been well-received by consumers and have increased sales. Kraft indicated that sales of its Sensible Solution products are growing at a rate three to four times faster than its products that do not qualify for the flag. In addition, the program has created incentives within the company to develop products that qualify for the flag, with resulting improvement in the overall nutritional profile of Kraft’s portfolio.¹¹³ Similarly, Pepsi reported that its Smart Spot products were 39% of the product mix but represented 65% of the company’s revenue growth in North America, and were growing at three times the rate of its other products.¹¹⁴ The companies agree that these programs are popular with consumers, because, as company-sponsored focus groups and quantitative research suggest, consumers want simple messages without too much information or detail, and prefer clear, positive signals over negative information or warnings.¹¹⁵

Companies also reported that the icons seemed to resonate even more with consumers in lower socio-economic groups and in certain minority communities.¹¹⁶ Thus, these labeling programs may be one way to reach specific populations that are at higher risk of obesity.

Some participants, however, criticized these seal programs. They expressed concern about the subjective nature of the nutritional criteria that companies apply and suggested that the seals were being used in some cases as a means of promoting sales of less nutritious foods to health-conscious consumers.¹¹⁷ In addition, although there was general agreement that consumers find nutrition icons helpful, there was also recognition that having multiple health nutrition icons in the marketplace with different formats and meaning could potentially be confusing to consumers.¹¹⁸ Such confusion could be confounded if terms were used in a manner inconsistent with those used for specific nutrient content claims approved for food labeling by the FDA.¹¹⁹ Some participants agreed that it might be desirable at some point for companies to collaborate to create more consistency across seal programs, and some suggested that there was an immediate need to standardize these efforts.¹²⁰ At the same time, others pointed to the advantages of allowing experimentation by companies to learn what programs work best¹²¹ for particular types of consumers or categories of products.¹²² A one-size-fits-all system, for example, would not allow for programs that identified the relatively healthier offerings in a particular category of less nutritious foods like cookies.¹²³

Nutrition seals and icons were the most common labeling initiatives reported by companies, but not the only examples of company efforts to educate consumers through enhanced labeling. Some companies reported that they were incorporating the 2005 USDA Food

Guidance System on their packaging,¹²⁴ and using games, trivia, and puzzles on cereal boxes and other packaging to teach children about nutrition.¹²⁵ Other approaches to enhanced labeling included providing clearer calorie information on the Nutrition Facts Panel on single-serving products¹²⁶ and indicating the number of servings per package on the front.¹²⁷ In addition, McDonald's recently announced its plans to place certain nutrition and calorie information on wrappers and boxes of some of its popular menu items.¹²⁸

2. Advertising

Beyond labeling, many of the industry's efforts to change the way it markets foods to children have focused on television and other forms of traditional advertising, with less attention given to promotions and other marketing techniques. These changes in advertising fall within two general categories: 1) limits on advertising directed at children; and 2) advertising that incorporates educational messages about diet and healthy lifestyle.

a. Restrictions on Advertising to Children

Although most companies have not adopted voluntary restrictions on the ways they market or advertise food to children, some have. The Coca-Cola Company stated that it does not advertise its soft drinks to children under 12 and has not done so for 50 years.¹²⁹ Kraft reported that it has a longstanding policy not to advertise in TV, radio, or print media that primarily reach children under age 6. Further, the company is shifting the mix of products that it advertises in media primarily reaching children ages 6 to 11 to products it identifies as healthier under its nutrition standards.¹³⁰ Kraft indicated that, by the end of 2005, only those products meeting

Kraft's nutritional criteria for its Sensible Solutions program would be advertised in children's media.¹³¹ Similarly, Pepsi indicated that it was committed to shifting its children's advertising to products meeting its Smart Spot criteria.¹³²

Other companies are not applying any nutrition standards to limit the products they advertise in children's media. Moreover, some participants point out that even companies that have adopted voluntary limits on what they advertise to children are still reaching a significant number of children through other means. For example, even though the absolute number of children who view many prime time television shows may be large, voluntary limits on advertising to children do not address advertising on such shows, because children are not the primary viewing audience in terms of percentages.¹³³ Nor do these voluntary actions address promotional activities, like tie-ins with children's movies and television programs, branding of children's toys, Internet sites with company-branded games, or other marketing techniques that appeal to children.¹³⁴

Participants and commenters were polarized on the question of whether nutritional standards for advertising directed to children should be adopted industry-wide. Many public health advocates and nutritionists stressed the need for such standards. The Produce for Better Health Foundation ("PBH"), a non-profit organization promoting more fruit and vegetable consumption, urged the FTC and HHS to develop national nutritional standards for foods that can be advertised and marketed to children.¹³⁵ The Center for Science in the Public Interest ("CSPI") suggested that the poor nutritional quality of products marketed to children is the central problem with current marketing practices and needs to be addressed systematically. CSPI

has proposed nutritional guidelines for voluntary implementation by industry.¹³⁶ Others also urged consideration of such an approach.¹³⁷

Some industry representatives rejected nutritional standards for advertising to children as “paternalistic,” especially if imposed industry-wide, arguing that any food can be eaten in moderation as part of a well-balanced diet.¹³⁸ Even companies that successfully use nutritional criteria for their own marketing to children were skeptical about whether there is sufficiently broad support for a voluntary industry-wide approach to succeed at this time.¹³⁹ Section VI provides a more detailed discussion of proposals to create industry-wide nutritional standards for foods marketed to children, as part of a self-regulatory program.

b. Nutrition and Healthy Lifestyle Advertising

Some food companies also reported that they are shifting their advertising messages to focus more on nutrition and healthy lifestyles. For example, McDonald’s asserted that a significant percentage of its advertising now focuses on balanced lifestyle messages, including an advertising campaign for children using Ronald McDonald and famous athletes, including Venus and Serena Williams, Tony Hawk, and others, to promote energy balance through diet and exercise.¹⁴⁰ Similarly, Kellogg’s described a general policy of encouraging physical activity and exercise in its advertising to children whenever possible. It also discussed a number of educational marketing campaigns directed at children that include advertising and other marketing elements, such as the “Earn Your Stripes” campaign with Tony the Tiger and famous athletes promoting physical activity and good diet, and “Zumbando con Kellogg’s,” a campaign targeting the Hispanic community and using Latin music to promote dance, exercise, and a

balanced diet.¹⁴¹

Although company-sponsored educational messages like these can help to reinforce the efforts of government and public health authorities to promote good nutrition, some participants questioned whether food companies can be relied on to give the most persuasive or accurate messages about diet. Those messages, they suggest, sometimes conflict with company efforts to market products that often are low in nutrition and high in calories.¹⁴²

3. Other Marketing and Promotions

Food companies have successfully used in-store promotions, advergames, licensing of children's characters, contests, and free samples to market their products to children. Food companies reported that they are now beginning to tap these resources more often for marketing good nutrition and exercise. PBH has partnered with National Institute of Health's National Cancer Institute and a number of restaurants, grocery stores, and other retailers to promote increased consumption of fruits and vegetables. One example is PBH's partnership with Wal-Mart for in-store promotional events using popular children's characters like Shrek, Charlie Brown, and Spider-Man. The events also include fruit and vegetable samples, free children's activity books, and other giveaways – techniques that have long been used by food marketers to make their products more appealing to children.¹⁴³ Such promotions at retail sites and restaurants, according to industry, show some promise in influencing children's diets.¹⁴⁴ PBH and its partners, for instance, have increased consumer awareness of the "5 A Day" program from 40% in 2003 to nearly 60% in 2005 and, as consumers have become more aware of the campaign, they have also begun to eat more fruit and vegetables.¹⁴⁵

Food companies also stated that they are using the Internet to convey nutrition and fitness messages. Kidnetic.com, for example, is a children's fitness website created by the International Food Information Council, in partnership with health and fitness organizations, and financed by contributions from food and beverage companies. The site includes games, recipes, health tips, bulletin boards, and other activities on diet and health.¹⁴⁶ Other companies, like Kraft, report shifting the content of their websites and focusing web games more on health and wellness messages.¹⁴⁷

4. Community Outreach and Education

In addition to making changes in how they market their products, several companies and industry groups said that they are sponsoring outreach programs in local communities and schools. Proponents of these community and school programs point out that the programs directly address obesity by actively engaging children and giving them tangible goals to exercise more and eat more healthfully.¹⁴⁸

Often, these outreach efforts involve partnerships with local government or with health and nutrition advocates. Some of the programs reportedly have focused on specific minority populations, where childhood obesity is more prevalent. For example, the American Council for Fitness and Nutrition ("ACFN"), a non-profit organization whose members include food companies and health and nutrition advocates, has developed a number of community outreach programs, including two pilot programs in 2004 specifically targeted to Hispanic and African-American families.¹⁴⁹ In addition, several individual companies stated that they are also partnering with health and fitness groups to create and sponsor outreach programs.¹⁵⁰

Some food marketers also explained that they have prepared educational materials for use in elementary and middle schools. For instance, Pepsi partnered with America On the Move to create the “Balance First” lesson plans and other materials to teach elementary and middle school children about balancing calorie intake with physical activity. The program reached three million elementary school students in 2004 and was scheduled to be distributed to 15,000 middle schools in 2005 in partnership with Discovery Education.¹⁵¹ Similarly, Coca-Cola was set to launch its “Live-It” program, a nutrition and exercise program, in one-third of middle schools in the fall of 2005.¹⁵² Both programs use non-branded materials in the schools.¹⁵³

Some workshop participants expressed concern that the company-sponsored programs focus too much on exercise as a solution and not enough on avoiding high-calorie, low-nutrition foods, including those that are marketed by the food company sponsoring the programs.¹⁵⁴ Also, these participants charge, programs are often heavily branded and thus constitute another means of marketing to children. In addition, few of these programs include any means to evaluate outcomes, thus making it difficult to know how much impact they actually have.¹⁵⁵

C. Marketing and Sale in Schools

Many companies engage in a variety of marketing activities and sales in schools. In 2004, the Government Accountability Office (“GAO”) issued a report on commercial activities in schools documenting a range of direct advertising and indirect marketing. Examples include: signage and billboards in schools and on school buses and shelters; logos and brand names on school equipment such as marquees and scoreboards; logos, ads, and brand names on book covers, assignment books, and posters; ads in school publications; ads on Channel One and on

Internet sites used within the school; free samples; and corporate-sponsored education materials, contests, incentives, and gifts.¹⁵⁶ In addition to these marketing activities, companies also sell foods and beverages in schools outside of the USDA-supervised school meal program. Sale of such foods in the school cafeteria alongside school meals, in vending machines, school stores, and snack bars is common at all grade levels.¹⁵⁷ Government studies and other reviews have noted that many of these foods are high in calories and low in nutrition. A 2001 report by USDA, for example, found foods sold in competition with school meal programs to be relatively low in nutrient density and relatively high in fat, added sugars, and calories.¹⁵⁸

Some companies have begun to voluntarily address concerns about the marketing and sale of high-calorie, low-nutrition foods in schools. A few have cut back or eliminated marketing activities in the school setting, and some also have implemented nutritional standards for the foods they sell in schools. Kraft, for example, reports that it has eliminated all in-school advertising and promotion and has established nutritional guidelines for school vending machine sales, such as 10% or less of total calories from a combination of saturated and trans fat.¹⁵⁹ Coca-Cola has guidelines against the sale of carbonated beverages in elementary schools, but not in middle or high schools. In middle and high schools, the company points to a policy that more than half of offerings should be zero-calorie and non-carbonated beverages.¹⁶⁰ Pepsi recommends that all of the products sold by its distributors in elementary schools and a majority of products in other schools meet its Smart Spot nutritional criteria. The company also recommends to its distributors that elementary school offerings be limited to single-serve packs of less than 150 calories.¹⁶¹ Finally, in August 2005, the American Beverage Association

announced a school vending policy under which the beverage industry would voluntarily restrict beverage sales in elementary schools to only water and 100% juice. In middle schools, the policy would prevent the sale of full-calorie soft drinks or full-calorie juice drinks with less than 5% juice during the school day. In high schools, no more than 50% of vending selections would be soft drinks.¹⁶²

Some participants view the industry's efforts to date as inadequate and question whether some of the initiatives represent real progress.¹⁶³ Participants point out that, despite company policies against marketing in schools, branding and other examples of marketing continue.¹⁶⁴ Many school vending machines, for example, have advertising panels on the front.¹⁶⁵ The mere selling of products in schools, one consumer advocate contends, is in itself a form of marketing.¹⁶⁶ Some participants also expressed concern about whether the voluntary nutritional standards that some companies have adopted for foods sold in school go far enough to eliminate foods that are low in nutrition and high in calories,¹⁶⁷ while others suggested that the restrictions become progressively too lenient at the middle school and high school level.¹⁶⁸ At the same time, at least one participant emphasized the importance of keeping in mind that school funding needs often are the underlying reason for commercial activities in schools.¹⁶⁹

CDC has urged educators, families, school, and public health officials to work together to improve the school nutrition environment, characterizing the goal as "integral to any strategy to improve dietary behavior and reduce overweight among youths."¹⁷⁰ Local school districts, state legislatures, and the federal government all are responding with initiatives to create healthier school environments, including measures to require or encourage improvements in the nutritional

quality of what is sold in schools. The 2004 GAO report indicated, for example, that 24 states had recently considered bills to restrict or ban the sale of beverages and foods of limited nutritional value in schools.¹⁷¹ Congress has also taken action, establishing a new requirement that all school districts with a federally funded school meals program must develop and implement wellness policies that address nutrition and physical activity by the start of the 2006-2007 school year.¹⁷² As part of these wellness policies, schools must set nutritional guidelines for all foods sold in schools outside of the school meals program. The requirement allows the local school districts to determine the specifics of any nutritional criteria.¹⁷³

The most recent federal government initiative that directly relates to the industry's sale of foods in schools is an ongoing project by the IOM's Food and Nutrition Board. Congress directed CDC to conduct a study and make recommendations concerning appropriate nutrition standards for such foods, in part to assist schools as they develop their required 2006 wellness policies. The study, which began in August 2005, is being implemented by the IOM with a final report to be issued by October 2006.¹⁷⁴ The IOM Committee on Nutrition Standards for Foods in Schools includes members with expertise in nutrition, public health, and education. It is charged specifically with reviewing the data on the availability and nutritional profile of foods sold in schools and developing science-based nutritional standards for those foods. The standards recommended by the IOM committee are not a mandatory element of the wellness policy requirement for the 2006 school year, but could provide important guidance for local school districts as well as for the food industry.

IV. Media and Entertainment Industry Initiatives to Improve Children’s Diets and Health

Like the food industry, the media have an important role to play in educating children and parents about nutrition and physical activity and influencing behavior to help combat childhood obesity. Research indicates that television is the primary source of nutrition information for all ages¹⁷⁵ and estimates that 65% of all American children have a television in their room.¹⁷⁶ Members of the media are responding to rising obesity rates by developing public service announcement (“PSA”) campaigns, donating money and air time for these campaigns, incorporating nutrition and fitness messages into programming, and licensing characters from children’s programs to promote healthier food choices to children.

A. Public Service Campaigns and Program Content

Public service campaigns can educate children and parents about the importance of a nutritious diet and active lifestyle – two things that can help counter obesity. To be effective, workshop participants said, these campaigns need to have messages that are simple, consistent, and constantly reinforced.¹⁷⁷ One example of a public service campaign that was reportedly effective in communicating simple messages is the “Small Steps” campaign – a collaborative effort between the Ad Council and HHS. Launched in 2004, the campaign targets parents, as the role model for their families, suggesting a variety of small changes in behavior that can lead to better diet, more exercise, and improved health.¹⁷⁸ Over the course of the campaign, the Small Steps website has attracted more than one million visitors and gets an average of 80,000 visitors per month.¹⁷⁹

Initial findings about the impact of the Small Steps campaign showed that, after ten months, public awareness of the actual PSAs and awareness of the Small Steps messages increased.¹⁸⁰ More people indicated that they were taking small steps to lead healthier lives. The campaign also resonated particularly with the Hispanic community, increasing awareness among Hispanics that small changes in eating habits and physical activities can have an impact on weight and health.¹⁸¹ Although the findings suggest the media's potential to educate viewers and influence their choices, they did not indicate dramatic behavioral changes. Only slightly over a third of those surveyed were considering or actually making changes to their lifestyle.¹⁸²

The Ad Council also spearheads The Coalition for Healthy Children initiative, which is a collaborative effort with several industry members.¹⁸³ The Ad Council created the coalition to develop consistent messaging for use in communications and to provide a mechanism for measuring the collective efforts of these sectors to change key attitudes and behaviors related to obesity.¹⁸⁴ The messages developed for this initiative are based on research on parents and children to determine what would be most motivating for behavioral change.¹⁸⁵ The Ad Council is monitoring the campaign's effect on attitudes and behavior through an on-going tracking study.¹⁸⁶

Univision, a major network serving the Hispanic community, has also committed money and air time towards educating its viewers about health and wellness. Univision teamed up with HHS and public health groups such as the Kaiser Family Foundation to develop a public service campaign for the Hispanic community, *Salud Es Vida . . . Enterate* (Lead a Healthy Life, Get the

Facts). The campaign was launched in 2003, with PSAs airing across all of Univision's media, including two television networks, radio stations, and the Internet.¹⁸⁷

Having consulted with experts in preschool health, nutrition, and pediatrics, Sesame Workshop launched "Healthy Habits for Life," an initiative based on in-house research regarding children's perceptions of the term "healthy."¹⁸⁸ The initiative includes English and Spanish PSAs featuring Sesame Street characters but goes beyond PSAs to encompass nutrition and fitness messages in television programming on the Public Broadcasting System, Internet materials, and DVDs. As one example of the effort, the Sesame Workshop has teamed with Sunkist to encourage children, with help from the Cookie Monster, to choose citrus fruit as a healthy snack.¹⁸⁹ The panelist from Sesame Workshop noted that because the emphasis of the campaign is on obesity prevention, as opposed to intervention, it targets a younger audience.¹⁹⁰

The Ad Council said that commitment from media outlets to support public service campaigns is vital to their success. Because television advertising is very expensive, substantial financial support is necessary for PSAs developed by non-profit organizations to receive national air time. As one panelist pointed out, a commitment from media outlets of a significant amount of air time for PSAs helps ensure that messages can penetrate to audiences in a sustained way.¹⁹¹ The Small Steps campaign, for example, received up-front commitments from national and local media for television air time, with more than \$106 million donated for media coverage.¹⁹² Nickelodeon commits 10% of its total media time annually, over \$20 million, to nutritional literacy spots aimed at children and parents.¹⁹³ Nickelodeon also creates its own health and wellness spots to air on its channels, such as a new campaign that teaches children the

importance of eating breakfast every morning, and the “Let’s Just Play” campaign.¹⁹⁴ Let’s Just Play also includes an initiative to prompt kids to be more active through partnerships with community-based organizations across the country that encourage physical activity.¹⁹⁵

Nickelodeon also recently expanded its Let’s Just Play initiative to a nationwide partnership with the American Heart Association and the William J. Clinton Foundation. The partnership, The Alliance for a Healthier Generation, is launching a comprehensive media and public awareness campaign.¹⁹⁶

Despite the reach of successful PSA campaigns, some participants expressed doubt that they can counter the large presence of food marketing to children.¹⁹⁷ The American Dietetic Association (“ADA”) noted that its research indicates that educational messages about nutrition on television are insufficient to balance food marketing on television.¹⁹⁸ One panelist commented that, notwithstanding the positive effect public education campaigns have on young people, social campaigns face significant challenges, whether they are done through PSAs or commercial advertising.¹⁹⁹ For example, this panelist commented that promoting healthier foods and exercise to children tends to be a tougher sell than advertising for less nutritious foods, such as certain cereals, fast food, soft drinks, and snacks.²⁰⁰ Another participant mentioned that, because the amount of food marketing is substantially greater than the amount of media time donated for PSAs, children see many more ads promoting foods high in calories and low in nutrition than ads promoting nutrition and fitness,²⁰¹ which makes it harder for PSAs to impact children’s attitudes and behavior.²⁰² She further observed that, unlike the case with successful

social marketing campaigns on other topics, children are exposed to “counter-advertising” that promotes less nutritious food choices and often makes such foods more appealing to children by touting their fun factor.²⁰³ The panelist also suggested it is more challenging to persuade people to avoid behavior that is lawful, such as eating high-calorie foods, than it is to advocate against unlawful conduct, such as driving without a seatbelt or drunk driving.²⁰⁴

B. Licensing of Popular Characters

Several participants expressed concern about media’s licensing of characters from popular movies and television shows to food companies to promote less nutritious foods. As noted earlier in this report, some workshop participants said that marketing and packaging featuring popular characters can successfully attract children to such foods and increase their appeal. Some research appears to confirm that popular characters can influence children’s food choices. A participant from Sesame Workshop described research that paired different food items with Sesame Street characters to see how children reacted to the foods. The results suggest that when a familiar character, like Elmo, was paired with food items, it substantially increased the appeal of the food with which it was shown, whether broccoli or chocolate.²⁰⁵ This suggests that popular characters can be used to promote more nutritious, lower-calorie foods to children.

Some media outlets have begun to license characters for the marketing of more nutritious, lower-calorie foods to children. Nickelodeon recently announced a new partnership that will pair some of its more popular characters with fruits and vegetables. Packaging for spinach and carrots will feature Nickelodeon’s SpongeBob Squarepants, Dora the Explorer, and LazyTown characters.²⁰⁶ Nickelodeon also plans to license characters from Blue’s Clues, Dora the Explorer,

and the Backyardigans to promote oranges.²⁰⁷ In addition, Nickelodeon has partnered with the Produce for Better Health Foundation on its “5 A Day” campaign so that popular Nickelodeon characters can help spread the 5 A Day message to kids. Walt Disney has also indicated that it will begin to remove characters like Winnie the Pooh, Mickey Mouse, and Chicken Little from candy and other less nutritious foods and is partnering with a supermarket chain to place a Mickey Mouse seal on items like bananas, and certain store-brand juices and other foods.²⁰⁸ Panelists agreed that using such characters to increase children’s interest in healthier foods is a step in the right direction.²⁰⁹

V. Food and Beverage Marketing to Minority Youth

Research shows that obesity and the accompanying health problems disproportionately affect minority populations.²¹⁰ Obesity rates are increasing faster in certain groups than in the general population, particularly in the African-American and Hispanic communities. Given that minority youth are predicted to comprise almost half of all U.S. children by the year 2010,²¹¹ decreasing childhood obesity in minority populations would result in a substantial decrease in overall childhood obesity levels. Consequently, participants often mentioned the specific impact on minorities of different types of marketing that target children, the steps that the food industry is taking to address childhood obesity, and the role of the media in educating children.

A. Advertising and Marketing

African-American and Hispanic children reportedly spend significantly more time watching television and viewing other media than non-Hispanic white children. One participant

described a recent report of the Kaiser Family Foundation finding that African-American youth ages 8 to 18 spend 14½ more hours per week and Hispanic youth spend six more hours per week watching television, DVDs, and movies than non-Hispanic white youth.²¹² According to Dr. William Dietz of the CDC, these differences in media use among African-American and Hispanic youth mirror the disparities that are seen in obesity rates between these groups and the general population.²¹³ Dr. Dietz noted that this correlation does not necessarily imply a causal link between screen time and obesity, but suggests that it is a possible contributory factor.²¹⁴

The type of television programming that minority children watch may also affect the nutritional profile of food products advertised to them. For example, it has been reported that television programs directed to African-American audiences contain a significantly higher percentage of ads for desserts, sweets, and soda compared to programs directed to general audiences.²¹⁵ This advertising, according to some participants, is also less likely to contain messages promoting health and wellness.²¹⁶ Similarly, other research indicates that, compared to magazines with a predominantly white readership, magazines targeted to minority audiences include more ads for less nutritious foods, such as snacks, desserts, soda, and fast food.²¹⁷

One participant reported that minority children have been found to respond more favorably to ethnically targeted marketing strategies than to marketing that is designed for the general population.²¹⁸ The panelist stated that advertisers use racial and ethnic cues (such as minority models, ethnic symbols, linguistic styles, and music) to link cultural values, beliefs, and norms with brand names or with the consumption of specific food products.²¹⁹ For example, it

has been reported that some soft drink marketers promote endorsements from celebrities with particular appeal to minority children, such as hip-hop artists.²²⁰ Soft drink companies also are said to have used street marketing campaigns, sending teens into minority neighborhoods to give out free product samples. Food companies also have used sponsorships to promote brand awareness among minority communities. A panelist cited as an example the promotional campaign co-sponsored by a fast food company and a beverage company that distributed African-American history materials to children in schools.²²¹

Another panelist discussed research currently underway about whether healthy lifestyle messages should be tailored to the race and socioeconomic status of the intended audience. The panelist explained that research indicates the messages parents want may vary by race and sometimes by socioeconomic status.²²² For example, some parents might want help with basic parenting skills, whereas others simply want nutrition guidance.²²³ Some Hispanic mothers surveyed were unsure how many fruits and vegetables their children should eat daily or what limits on media usage they should be setting.²²⁴ Some African-American mothers reported having difficulty negotiating food choices within the household, especially when an elder lived in the same household.²²⁵ Based on the initial findings of the research, the panelist suggested that “one-size-fits-all” messages are likely not as effective as culturally tailored messages for specific racial/ethnic and socioeconomic groups.²²⁶

B. Food Industry Initiatives

Most of the product and packaging initiatives of the food industry taken in response to obesity concerns, as described in Section III, have been designed to appeal to the general

population, rather than to specific minority populations. One reported exception is the reformulation of a General Mills product. The company had increased the soluble fiber content of its regular Cheerios cereal. It then reported observing that consumption of regular Cheerios was relatively low within the African-American community, while consumption of Honey Nut Cheerios was very high.²²⁷ After increasing the soluble fiber content of Honey Nut Cheerios to match that of its regular Cheerios and marketing the reformulated product with health-promotion messages targeted to African-Americans, General Mills measured an increase in consumption of the reformulated product by 700,000 new households with children, including many African-American households.²²⁸

Given that much remains unknown about the differences between various racial and ethnic minority communities with respect to the impact of food marketing, one panelist suggested that the industry should use its access to data on market segmentation to develop strategic messaging and consumer education for different racial and socioeconomic groups.²²⁹

C. Media and Entertainment Industry Initiatives

Many workshop participants agreed that special attention must be paid to reaching parents and children from minority groups, given the disproportionate obesity rates of children in these communities.²³⁰ In particular, some participants said that cultural differences within the African-American and Hispanic communities may call for different approaches with respect to media campaigns.²³¹ For example, Univision reported research suggesting that the media play a greater role as trusted source of information within the Hispanic community than they do within the

general population.²³² Additionally, Univision said that it has conducted studies with Nielsen that indicate that over 50% of Hispanic viewers actually discuss commercials, as compared to only 6% of the non-Hispanic population.²³³ This gives media catering to the Hispanic community a greater opportunity to empower their audiences with information.

Participants emphasized that there are some challenges to reaching certain minority groups through the media, however. One challenge is that only a limited number of networks specifically target minority audiences and the content directed at children on those networks is fairly limited. For example, BET, a major network catering to African-American audiences, does not feature programming intended for young children.²³⁴ Another challenge mentioned by participants is that messages suited for mainstream audiences are not necessarily effective in reaching minority communities.

Some participants stated that a greater understanding of the cultural and environmental factors influencing the eating habits and physical activity of minority groups is needed and could lead to a more productive discussion about the media channels, types of programming, and message content that would work best to communicate health and wellness.²³⁵ For example, as a few participants observed, factors such as access to fresh fruits and vegetables, grocery stores, and safe parks and neighborhoods in which to play, all have an impact on the health and wellness of some racial and ethnic communities.²³⁶ One panelist suggested that, combined with fewer advertising signals to eat more nutritious foods, the relatively limited access to healthier foods in minority communities (due to fewer grocery stores and more fast food restaurants) may partially

explain the higher obesity rates among African-American and Hispanic youth relative to non-Hispanic white youth.²³⁷ Furthermore, other panelists commented that suggestions to get active and play might be less viable in urban communities where safety is a concern.

VI. Self-Regulatory Standards for Food Marketing to Children

A. Value of Self-Regulatory Approach

A major goal of the workshop was to provide a forum for an examination of self-regulatory standards for responsible marketing of foods and beverages to children. Effective industry self-regulation can have significant benefits, and can, in many instances, address problems more quickly, creatively, and flexibly than government regulation.²³⁸ For self-regulation to be effective, however, it should clearly address the problems it seeks to remedy, adjust to new developments within the industry, be enforced and widely followed by affected industry members, and be visible and accessible to the public. In addition, the self-regulatory body must be independent from its member firms to objectively measure their performance and impose sanctions for noncompliance. Self-regulation can be particularly beneficial in instances where it covers marketing activities that the FTC, FDA, and other agencies lack the authority to challenge. Self-regulation, for example, can address practices that are neither unfair nor deceptive under the FTC Act. It can also address such activities without raising significant First Amendment concerns that might be presented by government-imposed restrictions of truthful, non-misleading speech. The FTC and HHS generally believe that self-regulation can be a useful tool, as long as it is “carefully tailored” to the problem at hand and there is no anti-competitive

effect.²³⁹

B. CARU Self-Regulatory Standards

1. Standards and Enforcement

A major focus of the discussion at the workshop was the Children’s Advertising Review Unit (“CARU”), the principal industry self-regulatory group that governs advertising directed to children, including food advertising. The advertising industry created CARU in 1974, and CARU is directly funded by annual fees paid by companies who advertise to children.²⁴⁰ CARU’s policy and direction are set by the National Advertising Review Council (“NARC”), a group made up of the Council of Better Business Bureaus (“CBBB”), and the three major advertising associations – the Association of National Advertisers (“ANA”), the American Association of Advertising Agencies (“AAAA”), and the American Advertising Federation (“AAF”).²⁴¹ The CBBB administers the day-to-day operation of CARU.

CARU’s mandate is to ensure that all advertising targeted to children under the age of 12 is truthful, accurate, and takes into consideration young children’s cognitive abilities. To achieve that mandate, NARC created the *Self-Regulatory Guidelines for Children’s Advertising* (“CARU Guides”), a set of basic principles and guidelines that apply to child-directed advertising in all media.²⁴² (The CARU Guides are set forth in Appendix B.) The CARU Guides, among other things, seek to deter the use of techniques in advertising that might exploit a child or confuse a child about the value or benefit of a particular product and include principles that may go beyond just prohibiting deceptive or misleading advertising.

In many respects, the CARU Guides reflect general self-regulatory principles used by

others. For example, GMA has its own set of self-regulatory principles for its food industry members that parallel many of the CARU Guides.²⁴³ Television broadcast and cable network advertising clearance standards also impose similar standards.²⁴⁴ And the International Chamber of Commerce (“ICC”) incorporates, in its Code of Advertising Practices, many of the same approaches for encouraging responsible and non-deceptive industry advertising to children.²⁴⁵ Finally, many individual companies have their own internal guidelines that govern how they advertise and market to children.²⁴⁶

Like most of these initiatives, the CARU Guides do not tell advertisers what foods they can and cannot market to children. Rather, they seek to prevent the use of techniques in advertising that might deceive or confuse children, or undermine the role of parents in selecting what products their children can have or purchase. For example, although the CARU Guides do not prohibit the advertising of “low-nutrition” or “snack foods,” they do prohibit misleading children into thinking that a “low-nutrition” product is nutritious, or that a “snack food” could serve as a substitute for a meal.²⁴⁷ They also prohibit ads that might encourage children to eat excessive amounts of foods or to pester their parents to buy them.²⁴⁸ Although the CARU Guides do not limit the use of licensed characters or celebrities to sell foods or other products to children, they, like FCC regulations, do prohibit advertisers from using popular program personalities or characters to sell any product during or adjacent to the TV program in which they appear.²⁴⁹ Other CARU Guides require that depictions of foods should encourage “sound use” of the product “with a view toward healthy development of the child and development of good nutritional practices,” and that ads “representing mealtime should clearly and adequately depict

the role of the product within the framework of a balanced diet.”²⁵⁰

With a staff of six, CARU reports that it reviews roughly 1,000 commercials each month, in addition to print and radio ads and Web sites.²⁵¹ Its monitoring focuses on media “directed” to children under the age of 12. This includes programming on “Nickelodeon, Cartoon Network, and Radio Disney, broadcast and cable TV during traditional children’s day parts and fringe and early prime time programming with a significant under-12 audience demographic.”²⁵²

In its 30-year history, CARU has opened inquiries into more than 1,200 specific child-directed ads. According to a NARC report issued in May 2004,²⁵³ about 150 of CARU’s formal and informal inquiries²⁵⁴ have concerned food advertising (although in the last few years many of those inquiries have not directly concerned claims in food ads but rather data collection and children’s privacy issues on food company websites).²⁵⁵ In virtually all instances, the advertiser complied or ended the specific advertising campaign, often indicating that it would take into account CARU’s concerns in future campaigns.

Companies found to have violated the CARU Guides are identified in a CARU press release and their violation (if they refuse to change a potentially deceptive ad) can be referred to the FTC.²⁵⁶ CARU does not fine or otherwise penalize violators, including repeat violators.²⁵⁷

Over the years, NARC has changed the CARU Guides in response to new advertising techniques or issues.²⁵⁸ For example, a major revision in 1996 added a new section addressing children’s privacy and data collection on the Internet. In addition, NARC was considering other changes to the CARU Guides and to CARU itself in the weeks leading up to the workshop.

2. Analysis of Self-Regulation

In the panel discussions and in the comments received for the workshop, views on the value of the CARU Guides varied widely. Overall, industry members felt the guides have “worked well” and have done an adequate job in protecting children from false, misleading, or inappropriate food ads. Consumer group participants were far less enthusiastic about the guides, indicating that self-regulation was “not working,”²⁵⁹ was a “failure,”²⁶⁰ or should be “abandoned.”²⁶¹ Senator Harkin, who offered opening remarks at the workshop, expressed the view that self-regulation to date has not been effective.²⁶² Some participants pointed to recent ad campaigns that they say violated the CARU Guides, arguing that CARU, whose budget is funded by those it regulates, cannot be relied on to independently police food industry advertising.²⁶³

A key topic of discussion was whether the CARU Guides, themselves, need updating to reflect today’s marketing. One participant, representing a consumer advocacy group, was concerned that the guides do not address some of the “newer forms of advertising and marketing such as in-school advertising, advergames, and peer-to-peer marketing.”²⁶⁴ By just covering national advertising, according to another participant, the CARU Guides do not reach new forms of promotion in today’s marketplace such as use of interactive technology to market products targeted to children.²⁶⁵ The discussion of the CARU Guides at the workshop also focused on issues not directly related to their scope, such as the size of the staff available to administer the guides; the visibility of CARU to the public and, in particular, to parents; and the limited sanctions available for companies who violate the guides.

In response to many of these concerns, GMA put forward a proposal to strengthen

CARU. (The GMA Proposal is set forth in Appendix C.) It asked that NARC revise the CARU Guides to “address” advertising contained in electronic games and interactive websites, and to ensure that third-party licensed characters are used “appropriately” in advertising.²⁶⁶ The GMA proposal did not set out how the guides should limit ads in electronic games or interactive websites or what would be an appropriate use of licensed characters, leaving it to NARC to develop specific restrictions it believes would be appropriate. GMA also recommended that the CARU Guides prohibit paid product placement on children’s television programming, although the FCC requirement of a buffer between program content and commercial content during children’s programming on cable and broadcast television already effectively prohibits such placements.²⁶⁷

GMA’s proposal addressed other criticisms of the current CARU program. For example, GMA recommended that: CARU’s staff be “substantially” increased; parents be given immediate and direct access to CARU to express concerns about advertising directed to children through mechanisms such as a toll-free complaint line; and CARU’s decisions be easily available on the CARU website.²⁶⁸ GMA also asked that CARU strengthen its program to pre-screen ads and expand its advisory board to bring in experts on nutrition and health. GMA’s proposal, however, did not address one of the key complaints about the CARU process, namely the limited sanctions available for violators of the guides.²⁶⁹

One industry member described the GMA proposal as a “good start.”²⁷⁰ One consumer group, however, criticized the proposal, because it was sponsored by only nine out of 140 companies in the trade association.²⁷¹ In addition, although the proposal was commended for

expanding the CARU guides to cover some other forms of advertising, it was deemed deficient by the consumer group for its failure to grant CARU jurisdiction over advertising and promotions in schools.²⁷²

Following the workshop, NARC began to consider GMA's recommendations. In a letter sent to the FTC on September 15, 2005, NARC announced several revisions to CARU that partially adopted GMA's suggestions. (The NARC letter is set forth in Appendix D.) NARC stated, for example, that CARU has set up an online consumer complaint form on its website, would expand its voluntary pre-review system for children's ads, and would add additional members who have expertise in children's health to its advisory board. NARC also committed to providing annual briefings to the FTC and HHS.

NARC has indicated that it is still looking at several other changes suggested by GMA. For example, it has directed CARU to look at ways to monitor advertising placed in electronic games; it is waiting for a report from CARU on interactive online games; it has set up a task force to examine product placement; and it has asked CARU to contact interested parties to assess what might be done regarding the use of third-party licensing of characters. The NARC letter did not indicate whether it was planning to expand the size of the CARU staff and its budget, as suggested by GMA.

In addition, NARC and CBBB recently announced the formation of a new self-regulatory working group that will be reviewing the CARU Guides in their entirety to make sure that they reflect the changing environment and the full range of marketing issues that have developed in recent years, including concerns about childhood obesity.²⁷³ The working group will evaluate the

use of new forms of marketing (such as the Internet), product placement, and cartoon characters to market foods to children. It also will explore a broad range of other ideas as to how self-regulatory standards for food marketing to kids could be modified.

The CBBB/CARU self-regulatory working group commenced its work in March 2006. The CBBB/CARU working group reports that it has solicited participation from a wide range of food industry members, academics, consumer advocates, and public health groups to develop proposals to modify the CARU Guides. According to the CBBB/CARU working group, it will make specific recommendations for changes to the Guides, will seek input from the public on these recommendations, and, after considering such information, NARC will announce any changes that it has decided to make to the CARU Guides and the enforcement process.

At the workshop, there was much discussion about whether the CARU Guides should include nutritional standards for foods marketed to children. In January 2005, the Center for Science in the Public Interest (“CSPI”) called for a new set of guidelines that would change how foods and beverages are promoted to children by directly taking on the “good food/bad food” debate.²⁷⁴ CSPI’s proposed *Guidelines for Responsible Food Marketing to Children* (“CSPI Proposal”) would restructure the existing self-regulatory system by setting specific nutritional thresholds that foods and beverages would have to meet before they could be marketed to children under the age of 18. In addition, the CSPI Proposal would prohibit the use of certain marketing techniques, such as licensed characters and premiums, for foods that, under those thresholds, were of “poor nutrition quality.”²⁷⁵

The CSPI Proposal would effectively limit the types of foods advertised to children.

Under the CSPI proposal, many soft drinks, caffeinated drinks, sports drinks, sugared breakfast cereals, snack foods, and quick-service restaurant foods could not be marketed to children.²⁷⁶ In its comment for the workshop, CARU indicated that imposing such restrictions is not a part of CARU's mandate.²⁷⁷ Nonetheless, some participants contended that if CARU continues to focus on how foods are marketed, rather than on what foods are marketed, self-regulation would do little to change children's diets. The representative from CSPI stated, "simply changing the way a sales pitch is couched is often irrelevant, because the real problem is that the food itself undermines children's diets and health."²⁷⁸

In questioning the reasonableness and practicality of the CSPI Proposal, an industry official asked who would set the nutritional standards and how would they be applied to the widely varying products food companies sell.²⁷⁹ CARU asserted in its comment that food products are not inherently dangerous or inappropriate – all foods may be safely incorporated into a balanced diet, so it follows that companies should not be held to a standard that prohibits some foods from being marketed.²⁸⁰ Other industry participants were concerned that imposing such standards for all foods would be unworkable, because many foods could never meet those standards.

CSPI stated that existing models can be used to come up with self-regulatory nutritional standards.²⁸¹ Others acknowledged that developing such standards would be difficult but believed it should be tried,²⁸² although another participant expressed distrust of industry implementing nutritional guidelines and urged that government enforce them.²⁸³ A representative from the European Union noted that, as a practical matter, even those who would prefer

government standards of enforcement should support expanded self-regulatory efforts, given that self-regulation is likely to have an effect long before any government statute or regulation could be implemented.²⁸⁴

In sum, the workshop record illustrates widely divergent views and many unanswered questions on the merits and difficulties of developing nutritional standards for food products marketed to children.

VII. Conclusion and Recommendations

The record developed at the workshop indicates that members of the food industry and the media are taking steps to address childhood obesity. They also have instituted a variety of promising initiatives that use the power of the marketplace to encourage children to eat better and exercise more. Although there are questions regarding whether these industry efforts go far enough, the FTC and HHS are encouraged by the progress being made.

The agencies also are encouraged by the discussions (some only preliminary) concerning the ways in which industry self-regulation can be improved. Several participants acknowledged at the close of the workshop that the process of expanding and enhancing self-regulation will require a sustained effort and that it is important that there be a continuing dialogue on how best to move the process forward.²⁸⁵ One approach would be to convene a formal dialogue, conducted under the auspices of a third-party facilitator, with broad participation by all stakeholders. The agencies were considering such an approach when NARC and CBBB

announced the formation of the CBBB/CARU working group effort to review and propose changes to the CARU Guides.

The agencies have concluded that the CBBB/CARU working group should be given a reasonable amount of time to complete its review and develop and implement changes to the CARU Guides before determining whether to recommend other alternatives. The agencies recognize that broad industry support is important to the ultimate success of any self-regulatory changes, and there appears to be such support for the CBBB/CARU working group. In addition, because NARC seems to have the ability to expeditiously adopt and implement changes to the CARU Guides, the CBBB/CARU working group may lead to changes sooner than other alternatives. Finally, the CBBB/CARU working group appears to provide a reasonable opportunity for consumer advocates, public health groups, and other stakeholders to participate in its process. To encourage participation and ultimate acceptance of its resolution of contested issues, the agencies underscore that the CBBB/CARU working group should establish and employ a process that is as open and transparent as possible.

The FTC and HHS emphasize that the government's follow-up report discussed below will closely evaluate the changes that the NARC Board makes to the self-regulatory process, including assessing whether these changes satisfactorily address the specific recommendations for self-regulation set forth below in this report, or whether additional steps are necessary.

Building on the initiatives highlighted at the workshop, the agencies recommend:

Industry Self-Regulation of Food Marketing to Children

General Process of Self-Regulation: The following steps should be taken as soon as practicable to improve the CARU process:

- NARC should expand CARU’s advisory board to include individuals with more diverse experience, such as nutrition, child health, and developmental psychology experts.
- NARC should evaluate and determine whether CARU’s staff and resources are sufficient to monitor and enforce adequately the CARU Guides. This determination should be made in light of any changes made in response to the recommendations of this report, and then be revisited in light of any further changes made in response to the CBBB/CARU working group.
- CARU should make it easier for parents and others to file complaints, and its decisions should be made more readily available and accessible to the public online.

Broader Issues of Self-Regulation of Food Marketing to Children: Industry also needs to consider a wide range of additional options as to how self-regulation could be modified to assist in combating childhood obesity. Among other things, the agencies recommend that the issues addressed include:

- how to modify the CARU Guides to address forms of marketing foods to children other than traditional advertising.²⁸⁶
- whether it would be beneficial and practicable to modify the CARU Guides to include (or to develop a new set of guides that would identify) minimum nutritional standards for

foods that are marketed to children, standards that shift marketing to children to focus on more nutritious, lower-calorie foods, or other measures that would improve the overall nutritional profile of foods marketed to children, recognizing that the appropriate standards or measures may vary based on product category.

- the feasibility of an independent non-profit or public health organization developing a seal or logo program which identifies more nutritious, lower-calorie foods.
- to what extent paid product placement of foods in contexts other than television programming (e.g., movies, video games, websites) is appropriate.
- what additional sanctions or other measures should be incorporated into the CARU Guides to deter violations, especially repeated violations.

Food Company Initiatives

- **Products:** Food companies should continue and expand their efforts to create new products and reformulate products, especially those marketed to children, to make them lower in calories and more nutritious. Companies should also increase their efforts to make nutritious, lower-calorie products appealing to children and more convenient for them to consume.
- **Packaging:** Food companies should continue and expand their use of packaging, such as smaller portion, single-serving, and other packaging cues, to help consumers, including children, control portion size and calories. Companies should also increase their efforts to package nutritious, lower-calorie products in ways that are more appealing to children

and more convenient for parents to prepare.

- **Labeling:** Food companies should explore the effectiveness of labeling initiatives, such as nutrition icons and seal programs, in helping consumers easily identify nutritious, lower-calorie products. Food companies should conduct consumer research to ensure that such initiatives do not mislead consumers and to identify the techniques that most clearly and effectively convey nutrition and calorie information.
- **Advertising/Marketing:** Food companies should review and revise their marketing activities to improve the overall nutritional profile of the products they market to children. Recognizing that appropriate standards or measures may vary based on company or product category, the agencies recommend that companies consider adopting: (1) minimum nutritional standards for the foods they market to children; or (2) standards that shift their marketing to children to emphasize more their nutritious, lower-calorie products; or (3) other measures that help to improve the overall nutritional profile of the products they market to children.
- Food companies should also continue to explore ways to improve public education efforts. Consumer research on the efficacy of various fitness and nutrition messages in marketing to children will help to identify simple and effective messages.
- **Marketing and Sales in Schools:** In addition to the wellness policies developed by local schools, food companies should review and revise their policies and practices to improve the overall nutritional profile of the products they market and sell to children in schools.

The agencies recognize that the appropriate standards or measures may vary based on product category.

Media/Entertainment Company Initiatives

- **Educational Messages:** The media and entertainment companies should continue to explore ways to improve their efforts to disseminate, and to work with others to disseminate, clear and effective educational messages to children and parents about nutrition and fitness, including incorporating such messages into programming.
- **Character Licensing:** The media and entertainment companies should review and revise their practices to foster the licensing of children's television and movie characters for use with more nutritious, lower-calorie products.

Public Education Campaigns/Community Outreach

- Food companies, advertising agencies, the media, entertainment companies, academic institutions, and others should expand their efforts jointly to develop and support substantial public education programs that promote nutrition and fitness to children, including outreach programs in local communities. These programs should use simple, positive, consistent messages that have been tested for effectiveness and are repeated across various platforms and venues to increase their impact.

Marketing of Foods to Racial and Ethnic Communities

- Food companies should include in their overall marketing strategy efforts to promote more nutritious, lower-calorie products to racial and ethnic minority populations in which

childhood obesity rates are high.

- Food companies, the media, and entertainment companies should also tailor their public education programs and other outreach efforts to promote better nutrition and fitness in racial and ethnic minority populations in which childhood obesity rates are high.

The FTC and HHS hope that the momentum created by the workshop will drive an expansion of food and media industry efforts to address childhood obesity, both through individual company initiatives and through a strengthened industry-wide self-regulatory system. The agencies will monitor closely future developments in food marketing to children. After allowing time for the private sector to consider and respond to the recommendations in this report, one or both of the agencies will issue a follow-up report assessing the extent to which positive, concrete measures have been implemented and identifying what, if any, additional steps may be warranted to ensure adequate progress is being made to address childhood obesity.

Endnotes

1. The Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. Sect. 3(2), does not apply to the workshop for a number of reasons. First, the workshop was convened for the purpose of assisting industry in developing self-regulatory guidelines, not for the purpose of obtaining advice or recommendations for the agencies. 41 C.F.R. Sect. 102-3.25; *see Sofamor Danek Group, Inc. v. Gaus*, 61 F. 3d 929 (D.C. Cir. 1995), *cert. denied* 516 U.S. 1112 (1996). Second, participation in the discussions at the workshop was open to the public via a public mike, providing a chance for any individual to voice opinions and share information, and thus did not incorporate the kind of management or control applicable to advisory committees. 41 C.F.R. Sect. 102-3 App. A to Subpart A, Sect. II. Third, it was a meeting for the purpose of exchanging facts or information, 41 C.F.R. Sect. 102-3.40(f). Finally, even if, to some extent, advice for the agencies may have been sought from or provided by attendees, it was sought or provided on an individual basis and not from the group as a whole. 41 C.F.R. Sect. 102-3.40(e).

2. For children, the terms "overweight" and "obesity" are used interchangeably and are defined as a BMI at or above the 95th percentile for gender and age (BMI-for-age) in children. *See* Centers for Disease Control and Prevention, "BMI - Body Mass Index: BMI for Children and Teens," <http://www.cdc.gov/nccdphp/dnpa/bmi/bmi-for-age.htm>. For adults, a BMI of 25-29 denotes someone who is overweight and a BMI of 30 or more denotes obesity.

Throughout this report citations to "Tr. I" and "Tr. II" refer to the transcript of the workshop. "Tr. I" citations refer to the transcript of the July 14 proceedings, and "Tr. II" to the July 15 proceedings. Speakers are identified by last name. The full transcript is available at http://www.ftc.gov/bcp/workshops/foodmarketingtokids/transcript_050714.pdf and [050715.pdf](http://www.ftc.gov/bcp/workshops/foodmarketingtokids/transcript_050715.pdf).

3. National Center for Health Statistics, "Prevalence of Overweight Among Children and Adolescents: United States, 1999-2002," <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/overwght99.htm> (last visited Mar. 10, 2006); Carmona, Tr. II at 7-8 ("[w]e can track this trend over the last several decades").

4. Richard P. Troiano and Katherine M. Flegal, "Overweight Children and Adolescents: Description, Epidemiology, and Demographics," 101 *Pediatrics* 497-504 (1998).

5. The 1999-2000 National Health and Nutrition Examination Survey ("NHANES") found that African American and Mexican American adolescents ages 12-19 were more likely to be overweight, at 21 percent and 23 percent respectively, than non-Hispanic white adolescents (14 percent). *See* National Center for Health Statistics, "Obesity Still a Major Problem, New Data Show," <http://www.cdc.gov/nchs/pressroom/04facts/obesity.htm>. In children 6-11 years old, 22 percent of Mexican American children were overweight, whereas 20 percent of African American children and 14 percent of non-Hispanic white children were overweight. *Id.*

6. Carmona, Tr. II at 8 (“Childhood obesity is an epidemic . . . and is a significant problem.”).
7. Dietz, Tr. I at 48.
8. According to a prospective study conducted in Bogalusa, Louisiana, researchers found that half of adults with a BMI that is greater than 40 (roughly 100 pounds overweight or more), were likely to have been overweight during childhood. *Id.* at 49-50.
9. Centers for Disease Control and Prevention, “Physical Activity and Good Nutrition: Essential Elements to Prevent Chronic Diseases and Obesity,” http://www.cdc.gov/nccdphp/aag/aag_dnpa.htm; Dietz, Tr. I at 43-46.
10. Harbour, Tr. I at 139 (“education can play a key part in helping parents and children take responsibility for smart eating choices.”); Carmona, Tr. II at 14-15 (consumer education is needed to improve health literacy among Americans).
11. Crawford, Tr. I at 19; Carmona, Tr. II at 17 (the 2005 Dietary Guidelines will help improve health literacy among Americans).
12. *See* USDA website at <http://teamnnutrition.usda.gov/kids-pyramid.html>.
13. Crawford, Tr. I at 20; *see* <http://wecan.nhlbi.nih.gov>.
14. *See* <http://www.cdc.gov/youthcampaign/>.
15. Crawford, Tr. I at 23.
16. *See* <http://www.healthierus.gov/steps/>.
17. Crawford, Tr. I at 20-22. Among other things, the FDA is considering whether calorie information should be made more prominent on the food label, whether serving sizes for some foods need to be updated, and whether multiple serving packages that could reasonably be consumed as a single serving should have calories listed on the label for both a single serving and the entire package, or for just the entire package. *See* 70 Fed. Reg. 17,008 (April 4, 2005).
18. The Keystone Center for Science and Public Policy is an organization that provides independent facilitator and mediation services to build consensus among public, private, and civic sectors in areas of environmental, health, and energy policy.
19. Crawford, Tr. I at 24-25.
20. *Id.*

21. Although the majority of those cases have involved weight loss products marketed for adults, a few have challenged allegedly deceptive claims for products promoted as weight loss aids for children. *See, e.g., FTC v. The Fountain of Youth Group, LLC*, Civil Action No. 3:04-CV-47-J-99HTS (M.D. Fla. Feb. 10, 2004) (stipulated final order) (challenged weight loss claims included advertising for “Skinny Pill for Kids”).
22. “Deception in Weight-Loss Advertising Workshop: Seizing Opportunities and Building Partnerships to Stop Weight Loss Fraud: A Federal Trade Commission Staff Report,” at ii (Dec. 2003), *available at* <http://www.ftc.gov/os/2003/12/031209weightlossrpt.pdf>.
23. “2004 Weight-Loss Advertising Survey: Staff Report: Federal Trade Commission,” (Apr. 2005), *available at* <http://www.ftc.gov/os/2005/04/050411weightlosssurvey04.pdf>.
24. Decision to Terminate Rulemaking, *In the Matter of Children’s Advertising*, 46 Fed. Reg. 48,710 (1981); *see also* Howard Beales, III, “Advertising to Kids and the FTC,” 12 *Geo. Mason Law Rev.* 873 (2004).
25. *See, e.g., Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 534-36 (2001) (striking down state restrictions on outdoor placement of tobacco advertising), *see also* Majoras, Tr. I at 9-10.
26. Majoras, Tr. I at 9-10.
27. The workshop was also a response to a recommendation by the Institute of Medicine of the National Academy of Sciences (“IOM”). In 2004, the IOM’s Committee on Prevention of Obesity in Children and Youth issued a report with many recommendations for industry, government, school, and parental action to combat childhood obesity. Institute of Medicine, *Preventing Childhood Obesity: Health in the Balance*, The National Academies Press (2005) (hereinafter “IOM Childhood Obesity Report”). The IOM recommended that HHS convene a public conference to assist in the development of industry self-regulatory guidelines for marketing and advertising to children. The IOM also recommended that the FTC monitor compliance with the guidelines.
28. Majoras, Tr. I at 10; *see also* Harbour, Tr. I at 142 (“I also encourage food marketers and the media to consider adopting a set of best practices.”).
29. Throughout this report the terms “food industry” and “food companies” refer collectively to all parties engaged in the marketing of foods and beverages and include the restaurant industry.
30. Majoras, Tr. I at 12-14.
31. This report mentions specific companies and their products. These references do not constitute an endorsement by FTC or HHS of these companies or their products.

32. *Id.*

33. The report attempts to illustrate the range of techniques used to market foods to children and the variety of industry initiatives to address childhood obesity concerns. Various sections highlight examples of the actions of specific members of the food and media industries. Most of the examples are drawn from those companies who participated in the workshop or filed comments. The report is not necessarily representative of the companies that did not participate, nor does it provide a comprehensive account of industry conduct.

34. A recently completed evidentiary review and analysis of food marketing and children's diets and health, by the Institute of Medicine's Committee on Food Marketing and the Diets of Children and Youth, noted significant gaps in the research. In particular, the IOM Committee's report notes that much of the relevant marketing research and data are proprietary and that peer-reviewed literature on the role of food marketing in the diets of children is largely limited to television advertising and has not explored other marketing venues and techniques. Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?*, The National Academies Press (2005) (hereinafter "IOM Food Marketing Report"), available at <http://www.nap.edu/catalog/11514.html>. Congress recently directed the FTC to conduct a food marketing study examining and attempting to quantify the full range of food marketing activities and expenditures directed at children and adolescents, including television, radio, print and Internet advertising, packaging, promotional events, in-store marketing, and product placement. Conference Report (H.R. Rep. No. 109-272 (2005)) for Pub. L. No. 109-108 (incorporating by reference language from the Senate Report (S. Rep. No. 109-88 (2005))).

35. IOM Childhood Obesity Report at 198-99. IOM estimates that, in 2002, the food industry spent about \$1 billion to advertise foods in television and print media to children, out of a total \$10 to \$12 billion spent on food marketing to children.

36. The IOM Food Marketing Report describes and attempts to quantify the variety of marketing techniques and venues used by food companies to reach children. IOM Food Marketing Report, Chapter 4.

37. Campaign for a Commercial-Free Childhood ("CCFC") Comment at 3. All public comments submitted in connection with the workshop are available at <http://www.ftc.gov/os/comments/FoodMarketingtoKids/index.htm>.

38. Spending by children aged 4 to 12 is estimated to exceed \$50 billion annually, while spending by teenagers is estimated at over \$150 billion annually. See Market Research.com, *Kids and Money* (July 13, 2001), available at <http://www.marketresearch.com>.

39. IOM Childhood Obesity Report at 200, citing H. Stipp, "New Ways to Reach Children," 14 *Amer. Demog.* 50 (1993); see also IOM Food Marketing Report at 1-4 (citing to more recent

research estimating that children and youth collectively spend more than \$200 billion annually).

40. IOM Childhood Obesity Report at 178. The IOM Food Marketing Report found a similar emphasis on food purchases, estimating that of the various spending categories, one-third of children's direct purchases are for sweets, snacks, and beverages, followed by toys and apparel. IOM Food Marketing Report at 1-4.

41. *Id.* at 198-99 (citing M. Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (2003); K. Brownell, *Food Fight: The Inside Story of the Food Industry, America's Obesity Crisis and What We Can Do About It* (2004)).

42. The IOM Food Marketing Report notes that total marketing investments by the food industry have not been clearly identified, but estimates that "only approximately 20% of all food and beverage marketing in 2004 was devoted to advertising on television, radio, print, billboards or the Internet," and suggests that, while television remains an important vehicle, a shift is occurring toward other forms of marketing, such as product placement, character licensing, special events, in-school activities, and advergames. IOM Food Marketing Report, at ES-3.

43. See FTC Staff Report, *Slotting Allowances in the Retail Grocery Industry: Selected Case Studies of Slotting Allowances in Five Product Categories* (2003); see also Childs, Tr. I at 89.

44. See <http://www.mcdonalds.com/usa/ronald/happy.html> (as visited Aug. 2, 2005).

45. See <http://www.keebler.com/promotions/magicbythemillion/rules.shtml> (as visited Aug. 2, 2005).

46. See *Marketing Practices in the Grocery Industry* at 10 (Feb. 2001), available at <http://www.ftc.gov/os/2001/02/slottingallowancesreport-final.pdf>. For another example of a McDonald's toy tie-in, see Rideout Presentation.

47. See CCFC Comment at 5.

48. See CIFIC Comment (June 7, 2005) at 9 (when brands appear on children's products, the children themselves become advertisements for the product). According to James McNeal, a professor of marketing at Texas A&M University who specializes in marketing to children, "licensed fads have a snowball effect. As they buy and display licensed products, the children are becoming salespeople, of sorts, for the licensed products." Consumers Union, "Selling America's Kids: Commercial Pressures on Kids of the 90's" (1998), available at www.consumersunion.org/other/sellingkids/license.htm.

49. See <http://164.109.46.215/100/innovations/kraftmac.html>

50. See Stephanie Thompson, “General Mills Adds Disney Characters to Fruit Snacks Line,” *Advertising Age* (May 8, 2000), at 22.

51. *Id.*

52. FCC regulations requiring buffers between programming and commercial content effectively prohibit product placement on children’s television programming, but children see such placements when watching family programming such as *American Idol*. See Children’s Television Act of 1990, 47 U.S.C. § 303a, and implementing regulation, 47 C.F.R. § 76.225.

53. The IOM cited an estimate that food companies spent \$3 billion in 2002 on packaging designed to appeal to children. IOM Childhood Obesity Report at 199, *citing* McNeal.

54. Harkin, Tr. I at 39; Smalls, Tr. I at 282-83.

55. Packaging size, such as smaller portion sizes or resealable packages, also can also have an impact on the level of consumption. See IOM Childhood Obesity Report at 182, 184.

56. See Center for Science and the Public Interest, *Pestering Parents: How Food Companies Market Obesity to Children* at 23-24 (Nov. 10, 2003), at 23-24, available at <http://www.cspinet.org/new/200311101.html> (hereinafter “*Pestering Parents*”).

57. The IOM has cited an estimate that food companies spent \$2 billion in 2002 on public relations efforts. IOM Childhood Obesity Report at 199, *citing* McNeal.

58. See General Accounting Office (as of 2004, the “Government Accountability Office”), *Commercial Activities in Schools* at 28-31 (Sept. 2000).

59. See *Pestering Parents* at 31-32.

60. The IOM has cited an estimate that food companies spent \$1 billion on traditional advertising. IOM Childhood Obesity Report at 199, *citing* McNeal.

61. *Advertising Age*, *Special Report: 1,000 Leading National Advertisers* (Jun. 27, 2005), at S-14.

62. The IOM’s recent report on food marketing reviewed the available studies on children’s exposure to advertising on television. The findings of these studies vary considerably, depending on when they were done, the method and data used to estimate exposure, and whether the study adjusts for the increased use of 15-second ads over time. See IOM Food Marketing Report at 4-41 - 4-43.

63. The FTC staff relied on Nielsen data for one week in each of November 2003, February, May and July 2004. The data cover ads in seven broadcast networks, 50 national ad-supported cable networks, nationally syndicated programming, and ads that originate locally.

64. See John D. Abel, *The Child Audience for Network Television Programming and Advertising*, (Nov. 1978) (a study of national TV advertising to children); J. Howard Beales, III, *An Analysis of Exposure to Non-Network Television Advertising*, (Nov. 1978) (a study of local advertising exposure); and Richard P. Adler *et al.*, *Research on the Effects of Television Advertising on Children*, National Science Foundation (GPO, Washington, D.C. 1977) (a review of children's TV viewing patterns). Both the 1977 and 2004 ad data are from sweeps months so the ad composition may differ from that in other months.

65. Children's shows are those in which children make up at least 50 percent of the audience; family shows are those in which children make up at least 20 percent of the audience.

66. The IOM's recent report also reviewed available studies on food advertising to children, especially in children's television programming. The largest studies reviewed by IOM suggest that food advertising was 64 percent of ads in children's programming in the 1970s, 52 percent in the 1980s, and 46 percent in the early 1990s. See IOM Food Marketing Report at 4-44.

67. CSS/GES Comment at 6.

68. Screenshots of examples can be found at <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/vrideout.pdf>. For additional examples of web-based food advertising, see *Pestering Parents* at 20-21.

69. Story and French Comment at 9; see also Moore, Tr. I at 121-22.

70. Advertising Age, Special Report, at S-14.

71. McIntyre, Tr. I at 102-03; Moore, Tr. I at 121.

72. Majoras, Tr. I at 8-9; Carmona, Tr. II at 8-10. This view is consistent with that of other researchers and advocates. See, e.g., IOM Report at 181-92, 198-204; Promotion Marketing Association, Inc., Comment at 5; Sandy Szwarc, Comment at 2. See also Todd Zywicki, Debra Holt & Maureen Ohlhausen, "Obesity and Advertising Policy," 12 Geo. Mason L. Rev. 979 (2004).

73. Comment of the Association of National Advertisers ("ANA"), June 7, 2005 at 4; Comment of the Grocery Manufacturers Association ("GMA"), July 14, 2005 at 10; Byrd-Bredbenner, Tr. I at 234-5.

74. Previous research has documented ways in which marketing can have positive health benefits. In the 1980s, food advertising on the link between fiber and cancer risk led to increased consumer demand for high fiber cereals and increased the supply of products with higher fiber. See Pauline Ippolito & Alan Mathios, *Health Claims in Advertising and Labeling: A Study of the Cereal Market*, FTC Bureau of Economic Staff Report (1989).

75. Goldin, Tr. I at 167; Jaffe, Tr. II at 115.

76. A 2005 survey by the GMA showed that 86% of the 42 food and beverage companies responding to the survey were introducing new products or reformulating products and sizes, with another 12% planning to do so. Since 2002, those 42 companies had introduced 4,500 new or reformulated products and sizes. GMA Health & Wellness Initiative Survey (July 2005), *appended to GMA Comment*, at 4-6.

77. See, e.g., Berlind, Tr. I at 212; Leach, Tr. I at 213 and Tr. II at 138.

78. See, e.g., Goldin, Tr. I at 191-92.

79. General Mills Comment at 2; Byrd-Bredbenner, Tr. I at 237; Leach, Tr. I at 241.

80. Berlind, Tr. I at 239.

81. Harris, Tr. I at 219, 242-43.

82. Rodgers, Tr. I at 151.

83. Pepsi Comment at 1; Kraft Presentation, Slide 4.

84. Donahue, Tr. I at 159.

85. Kellogg Comment at 3.

86. GMA Health and Wellness Initiatives Survey (July 2005), at 5.

87. Donahue, Tr. I at 159.

88. Kellogg Comment at 4.

89. Berlind, Tr. I at 212; Leach, Tr. I at 214.

90. According to General Mills, this conversion means that all of its cereals are now either an excellent or good source of whole grain, as defined by the company. The purpose of the conversion to whole grain was purportedly to improve heart health and help with weight

management. General Mills Comment at 7-8.

91. Kraft Comment at 3.

92. Leach, Tr. I at 218, Pepsi Presentation at Slide 8.

93. In its 2003 report on food marketing to children, CSPI praised the fact that some companies are offering a few more nutritious choices for children but also asserted that little overall progress had been made. *Pestering Parents* at 51.

94. CIFIC Comment (June 7, 2005) at 7.

95. The GMA survey found that more than half of the food and beverage companies it surveyed had made packaging changes specifically to create sizes more appropriate for children. GMA Health and Wellness Initiatives Survey (July 2005), *appended to GMA Comment*, at 7.

96. Powell, Tr. I at 148-9.

97. *Id.*

98. Leach, Tr. I at 215; Rodgers, Tr. I at 151; Kellogg Comment at 5; Berlind, Tr. I at 208.

99. Donahue, Tr. I at 159.

100. General Mills Comment at 3-4.

101. *See, e.g.,* Berlind, Tr. I at 241-2.

102. Powell, Tr. I at 149.

103. *See* http://www.dole.com/Products/Products_Detail.jsp?CatGroupID=5&ID=42.

104. Harris, Tr. I at 221, 248;

105. Sutherland, Tr. I at 171; Leach, Tr. I at 216, 249.

106. Berlind, Tr. I at 212.

107. Reeves, Tr. I at 175; Byrd-Bredbenner, Tr. I at 236; Leach, Tr. I at 255; Acuff, Tr. I at 266.

108. Sutherland, Tr. I at 168-71, 182-83 and 194; Acuff, Tr. I at 228.

109. Kraft Comment at 4; Berlind, Tr. I at 211.

110. Pepsi Presentation; Leach, Tr. I at 215.
111. Harris, Tr. I at 221.
112. General Mills Comment at 8-9; Powell, Tr. I at 148-49.
113. Berlind, Tr. I at 212.
114. Leach, Tr. I at 217.
115. *Id.* at 216; Harris, Tr. I at 221. Pepsi, for example, reported testing a stop light format that has been adopted in other countries. According to Pepsi, consumers hated the idea of a warning signal on products. They preferred being told what was healthier rather than being made to feel guilty about foods they already recognized had unhealthy attributes. Leach, Tr. I at 249.
116. Berlind, Tr. I at 246; Leach, Tr. I at 247.
117. CIFIC Comment (June 7, 2005) at 13-14.
118. Berlind, Tr. I at 246; Leach, Tr. I at 246.
119. FDA food labeling regulations include definitions of a variety of terms that are permitted on food packaging to characterize the level of nutrients in a food, such as “good source,” “low,” and “reduced.” To the extent these or similar terms are incorporated into company nutrition icons on product labels, they would need to be consistent with FDA labeling regulations.
120. *Id.*; McKinnon, Tr. I at 247.
121. Leach, Tr. I at 247.
122. Harris, Tr. I at 249.
123. Berlind, Tr. I at 250. One participant suggested that, in addition to providing signals on packaged food, there is also a need for clear cues in supermarkets and restaurants to help consumers make healthier choices. Byrd-Bredbenner, Tr. I at 252.
124. GMA Comment at 4.
125. Kellogg Comment at 4-5.
126. Leach, Tr. I at 215.
127. Kraft Comment at 4.

128. See Rhonda Rundle, *Read It and Weep? Big Mac Wrapper to Show Fat, Calories*, Wall Street Journal, Oct. 26, 2005 at B1. Foods sold in restaurants are not generally subject to the FDA labeling regulations that require disclosure of nutrition information on packaged food labeling.
129. Rodgers, Tr. I at 153.
130. Kraft Comment at 3.
131. Berlind, Tr. I at 211.
132. Leach, Tr. I at 218.
133. CCFC Comment at 3. As an example, CCFC points to Coca-Cola's sponsorship of *American Idol*, a program that consistently rated among the top ten shows viewed by children ages 2 to 11.
134. CIFIC Comment at (June 7, 2005) 7-9 (June 7, 2005).
135. Produce for Better Health Foundation, "National Action Plan to Promote Health Through Increased Fruit and Vegetable Consumption" (2005) at 4, *available at* http://www.5aday.org/commcenter/actionplan/pbh_nap_book041905.pdf.
136. Wootan, Tr. II at 78-79.
137. Byrd-Bredbenner, Tr. I at 262; Montgomery, Tr. II at 77; Miller, Tr. II at 78.
138. Association of National Advertisers Comment at 6.
139. Berlind, Tr. I at 260; Leach, Tr. I at 161.
140. Donahue, Tr. I at 162, 194 (describing McDonald's "What I Eat and What I Do" and other balanced lifestyle ad campaigns); *See also* "McDonald's Launches New Worldwide Balanced, Active Lifestyles Public Awareness Campaign," McDonald's Press Release (March 8, 2005).
141. Kellogg Comment at 5.
142. The Public Health Advocacy Institute (PHAI) Comment at 3.
143. PBH Presentation at 4; Brugler at 223-4; PBH Press Release, "All for Good Cause: PBH Takes Home Top Health Marketing Honor" (June 20, 2005).

144. One participant had several other suggestions for in-store promotions that would encourage children to buy healthier products, such as shelf markers that flag healthy products for children, special displays of healthy products, and incentives or premiums that allow children to earn points and redeem prizes like sports equipment. Nancy Childs Comment at 1.

145. PBH Presentation at 10; Brugler, Tr. I at 225.

146. <http://www.kidnetic.com>.

147. Kraft, for instance, has announced that by the end of 2006, only its more nutritious “Sensible Solutions” products will appear on Kraft websites that primarily reach children ages 6-11. See <http://www.kraft.com/newsroom/09152005.html>.

148. Harris, Tr. I at 239; see also Society for Public Health Education Comment (community-based approaches are proven effective).

149. ACFN Comment; GMA Comment at 4-5.

150. GMA Comment at 7. Examples include: Kellogg’s partnership with “Girls on the Run,” a 12-week after-school program for girls ages 8 to 11 years that is active in 100 cities and focuses on running games, workouts, and a 5-kilometer race (Harris, Tr. I at 220); “Triple Play,” an after-school health and wellness program with the Boys and Girls Clubs of America that has been funded for five years by Kraft and Coca-Cola (Kraft Comment at 4); Kraft’s “Salsa Sabor y Salud,” a healthy lifestyle program for Latino families and children ages 3 to 12 (Kraft Comment at 4 and GMA Survey at 14); General Mills “Champions” program, which gives grants to community-based groups to develop programs to encourage balanced diet and physical activity (GMA Survey at 14); and McDonald’s “Go Active America” challenge, a 36-day program going to communities across the country to educate about nutrition and fitness, and distribute step counters along with adult “happy meals” with salad and water (Donahue, Tr. I at 161).

151. American Beverage Association Press Release (Aug. 6, 2005), available at http://www.ameribev.org/pressroom/2005_vending.asp.

152. *Id.*; Rodgers, Tr. I at 152.

153. Rodgers, Tr. I at 153.

154. CIFIC Comment (June 7, 2005) at 12-13.

155. One example of a program that will monitor progress is The Kids Fitness Challenge, a pilot program in elementary, middle, and high schools, funded by corporate donors and supported by CDC and the President’s Council on Fitness. The program will take a comprehensive

approach to addressing childhood obesity in schools by offering fresh fruits and vegetables, healthy snacking in vending machines, and physical activity programs. The impact of the program will be monitored through children's test scores, physical fitness, attendance, and discipline. Wordin, Tr. II at 99.

156. *GAO Report on Commercial Activities in Schools*, GAO-04-810 (Aug. 2004) at 5, Table 1.

157. *Foods and Beverages Sold Outside of the School Meal Programs: Fact Sheet*, School Health Policies and Programs Study 2000, Centers for Disease Control and Prevention (98% of high schools, 74% of middle schools, and 43% of elementary schools have vending machines, school stores, canteens, or snack bars where students can purchase food and beverages independent of the USDA-supervised school meals programs).

158. "Foods Sold in Competition with USDA School Meal Programs: A Report to Congress," USDA, Food and Nutrition Service (Jan. 12, 2001) at 4, *available at* http://www.fns.usda.gov/cnd/Lunch/CompetitiveFoods/report_congress.htm. More recently, a 2004 CDC study reported "although the majority of schools offered some nutritious foods and beverages [outside of the USDA-supervised meal programs], the majority of schools also offered less nutritious choices. "Competitive Foods and Beverages Available for Purchase in Secondary Schools - - Selected Sites, United States" (2004), 54 MMWR Weekly 917 (Sept. 23, 2005) (hereinafter "Competitive Foods"). Similarly, the 2000 CDC study showed that less healthy snacks and drinks dominate the offerings. Soft drinks, high-fat salty snacks and baked goods, and candy are more widely available than healthier choices like 100% fruit juices, bottled water, milk, and low-fat snacks and baked goods. CDC 2000 Study. A more recent CSPI survey suggests offerings have not improved. The 2004 survey of 1,420 vending machines in 521 middle and high schools found that 70% of the beverage options were drinks with added sugar such as soda, juice drinks, iced tea, and sports drinks, and 80% of snack options were candy, chips, and sweet baked goods. *Dispensing Junk: How School Vending Undermines Efforts to Feed Children Well*, Center for Science in the Public Interest (May 2004) at 4. These reports have also suggested that the prevalence of foods that are high in calories and low in nutrition contributes to children's poor eating habits and to childhood obesity. USDA/FNS 2001 Report at 4; *see also Dispensing Junk*, CSPI (May 2004).

159. Berlind, Tr. I at 211; Kraft Presentation at Slide 3.

160. Rodgers, Tr. I at 153. Some participants pointed out, and beverage companies acknowledged, that the soft drink manufacturers may lack the authority to ensure compliance with their nutritional standards by the regional bottlers that typically contract with the schools. CIFIC Comment (June 7, 2005) at 9; Pepsi Presentation.

161. Leach, Tr. I at 218 and Pepsi Presentation.

162. American Beverage Association Press Release (Aug. 16, 2005), http://www.ameribev.org/pressroom/2005_vending.asp.

163. As one example, the American Beverage Association proposal to limit high school soft drink (including full-calorie juice drinks with less than 5% juice) sales to 50% or less of offerings may not lead to significant improvements, if any, from existing ratios. The 2004 CSPI survey suggests that, on average, levels are already below 50%. Of 1,420 vending machines in 251 schools, 39% of high school vending machines slots were for regular soft drinks and 6% for diet soft drinks, well under the 50% recommended by the ABA policy. CSPI 2004 Vending Machine Survey at 5, Table 1. Also, because the policy allows companies to wait until existing beverage contracts expire, implementation may be slow.

164. CIFIC Comment (June 7, 2005) at 7-9.

165. Ross Getman Comment at 2.

166. CIFIC Comment (June 7, 2005) at 7.

167. Some participants cited sports drinks as an example of a drink with high sugar content and minimal nutrition that meets nutritional standards for sale in schools under some company policies. CIFIC Comment (June 7, 2005) at 9.

168. Some argue that older children are more vulnerable to marketing and sales in schools because they have more money and opportunity to purchase foods without their parents' knowledge or involvement. Wootan, Tr. II at 72-3. Furthermore, the USDA has determined that children in their middle and high school years have less nutritious diets. USDA found, for instance, that girls, ages 14 to 18, have especially low intakes of fruits and dairy products and more than two-thirds of them have a diet that exceeds recommended intake of total fat and saturated fat. Teenage boys are especially heavy consumers of soda, with over a third consuming more than three servings a day. USDA/FNS 2001 Report at 4.

169. McKinnon, Tr. I at 258.

170. "Competitive Foods" at 917.

171. *GAO Report on Commercial Activities in Schools*, GAO-04-810 (Aug. 2004) at 10.

172. Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, § 204, 118 Stat. 729 (2005).

173. See USDA Wellness Policy Requirements, *available at* http://www.fns.usda.gov/tn/Healthy/wellness_policyrequirements.html.

174. See IOM, Food and Nutrition Board, *Nutrition Standards for Foods in Schools*, project overview available at <http://www.iom.edu/SchoolFoods2006>.
175. Reeves, Tr. I at 173.
176. Dr. Dietz, of CDC, observed that there is a direct relationship between a child having a television in his room and the amount of television he watches. Dietz, Tr. I at 54.
177. Reeves, Tr. I at 173.
178. Arthur, Tr. I at 270.
179. *Id.*; Combating Childhood Obesity: Selling Health & Wellness to Families, Ad Council presentation, July 14, 2005, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/harthur.pdf>.
180. Awareness of the Small Step messages increased from 79% to 86%. Arthur, Tr. I at 272.
181. The number of Hispanics that agreed that small changes in your eating habits and physical activities can have an impact on your weight and health increased from 56% to 63%. Arthur, Tr. I at 272-273.
182. *Id.*; *see also* Combating Childhood Obesity: Selling Health & Wellness to Families, Ad Council presentation, July 14, 2005, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/harthur.pdf>.
183. The coalition is being supported by the Robert Wood Johnson Foundation and draws upon food and beverage companies such as Coca-Cola, Subway, Pepsi, and Kraft, as well as other corporate marketers, the media, non-profits organizations, and government agencies to implement a unified communications strategy. The Ad Council, *Ad Council Announces Collaboration to Combat Childhood Obesity “Coalition for Healthy Children,”* News Release, July 13, 2005.
184. *Id.*
185. Marketing agencies Strotzman International and McCann Erickson also assisted the Ad Council with this research. *Id.* The messages developed for parents include, “Playing with your kids, the best exercise of all;” “Is your kid eating a home run or a strike out?” “Keep portions in check – size matters.” Messages for children include, “Are you eating a home run or a strike out?” “Sitting around is for wimps;” “Being stuffed only makes sense if you’re a turkey.” Arthur, Tr. I at 276; *see also* Ad Council presentation, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/harthur.pdf>

186. Ad Council is partnering with Yankelovich, a marketing and consulting organization that provides marketing and consumer research, for the on-going study. Arthur, Tr. I at 274.
187. Daboub, Tr. I at 292; Press release announcing campaign, Nov. 19, 2003, *available at* http://www.univision.net/corp/en/pr/Washington_19112003-1.html.
188. Kotler, Tr. I 285-289; *see also* The Healthy Habits for Life Initiative at Sesame Workshop, Kotler Presentation, July 14, 2005, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/jkotler.pdf>.
189. *See* “‘C’ is for Citrus as Sunkist and Sesame Workshop Announce Healthy Habits for Life Partnership,” Sesame Workshop Press Release, Nov. 7 (2005).
190. *See* http://www.adcouncil.org/campaigns/healthy_lifestyles/ for links to Sesame Workshop PSAs.
191. Rideout, Tr. I at 306.
192. Arthur, Tr. I at 270-71; *see also* Combating Childhood Obesity: Selling Health & Wellness to Families, Ad Council presentation, July 14, 2005, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/harthur.pdf>.
193. Nickelodeon Comment at 1 (June 8, 2005).
194. Smalls, Tr. I at 283; *see also* Nickelodeon Comment at 1.
195. Nickelodeon donated \$600,000 in grants to communities in all 50 states through this initiative during 2004 and 2005 and is doubling the amount this year. *Id.*
196. Information about the full scope of the campaign is available on the Alliance for Healthier Generation website at www.healthiergeneration.org.
197. Rideout, Tr. I at 294-96.
198. Reeves, Tr. I at 176.
199. Rideout, Tr. I at 294.
200. *Id.*
201. *Id.*
202. *Id.*

203. Rideout, Tr. I at 296; *see* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/> for link to video clip of commercials from Rideout presentation.
204. *Id.*
205. For example, when pictures of broccoli and chocolate were offered as choices, the vast majority of kids – 78% – chose the chocolate over broccoli. However, when an image of Elmo was placed next to the picture of broccoli, many more children chose broccoli – 50% picked broccoli with Elmo as opposed to 22% without Elmo. Elmo had a similar effect on children’s chocolate choices. Those choosing chocolate increased to 89% with Elmo, from 78% without Elmo. Kotler, Tr. I at 289-291; The Healthy Habits for Life Initiative at Sesame Workshop, Kotler Presentation, July 14, 2005, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/jkotler.pdf>, at 12-17.
206. Smalls, Tr. I at 282-83.
207. *Id.*
208. *See*, Melanie Warner, *Influencing Young Diets*, N.Y. Times, Dec. 16, 2005 (Business Section).
209. Rideout, Tr. I at 307.
210. Carmona, Tr. II at 13.
211. Grier, Tr. I at 104.
212. *Id.* at 105; *see also* Dietz, Tr. I at 52 and slide entitled Screen Media Exposure by Ethnicity, *available at* <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/presentations/wdietz.pdf>.
213. Dietz, Tr. I at 52.
214. *Id.*
215. *See* The California Endowment, “Food and Beverage Industry Marketing Practices Aimed at Children: Developing Strategies for Preventing Obesity and Diabetes” (Nov. 2003) (hereinafter “California Endowment Paper”) at 8, *available at* <http://www.calendow.org/reference/publications/pdf/disparities/at> 13; Grier, Tr. I at 106. Dr. Grier reported that food companies also have developed customized products for ethnic minority youth. Some marketers have developed sweeter fruit-flavored beverages to appeal to the tastes of black and Hispanic children. *Id.* at 107.

216. Grier, Tr. I at 105.
217. Grier, Tr. I at 123.
218. Grier, Tr. I at 104.
219. Grier, Tr. I at 105.
220. *See* California Endowment Paper at 14.
221. Grier, Tr. I at 105.
222. Sutherland, Tr. I at 167.
223. *Id.*
224. *Id.*
225. *Id.*
226. Sutherland, Tr. I at 168-69.
227. Powell, Tr. I at 183.
228. The increase in the households consuming Honey Nut Cheerios occurred between 2001 and 2002. General Mills Comment at 7.
229. Sutherland, Tr. I at 191.
230. *See, e.g.*, Grier, Tr. I at 103-07; Reeves, Tr. I at 179-80; Sutherland, Tr. I at 180; Carmona, Tr. II at 13.
231. *See, e.g.*, Reeves, Tr. I at 172-178.
232. Daboub, Tr. I at 311.
233. *Id.*
234. BET is the nation's leading television network providing entertainment, music, news and public affairs programming for the African-American audience. Popular shows include *College Hill*, *Club Comicview*, *Bobby Jones Gospel*, *Soul Food* and *106 & Park: BET's Top 10 Live*, none of which are intended for young children. Additional information regarding BET available at http://www.viacom.com/view_brand.jhtml?inID=7§ionid=2.

235. Juzang, Tr. I at 302-303.

236. Grier, Tr. I at 123-124; Daboub, Tr. I at 306.

237. Grier, Tr. I at 106-107.

238. Majoras, Tr. I at 14.

239. *See* Leary, Tr. II at 22, 28.

240. CARU is financed by the children's advertising industry, while NAD/NARB, the self-regulatory body that reviews general advertising, not directed to children, derives its sole source of funding from membership fees paid to the Council of Better Business Bureaus. For a listing of CARU supporters, see <http://www.caru.org/support/supporters.asp>.

241. CARU Comment at 1.

242. The CARU Guides contain a wide range of principles and guidelines that restrict advertising claims for products, several of which specifically apply to food and beverage advertising. For example, the guidelines require advertisers not to mislead children about the nutritional benefits of a product, to depict appropriate amounts of a product for the situation portrayed, not to portray snacks as substitute for meals, and to show mealtime products in the context of a balanced diet.

243. GMA Comment, Appendix D.

244. *See, e.g., ABC Television Network Advertising Standards and Guidelines* (on file with the Commission) at 18 ("commercials for snack products may not recommend or suggest indiscriminate and/or immoderate use of the product"). *See also* Nickelodeon Comment at 2. In describing steps implemented to date, Nickelodeon described how it had: "(s)upplemented existing Children's Advertising Review Unit (CARU) guidelines and used our Board membership to prod for more self-assessment and further movement on the self-regulatory front. Specific Nickelodeon efforts include stipulating that ads for food should not condone excessive consumption; should illustrate portion sizes appropriate to the setting portrayed; and depict children in a manner that suggests that they are in control of their behavior."

245. *See* Hawkes Comment at 4. "Television advertising is covered by the ICC International Code of Advertising Practice (1997). According to the code, advertising should not be deceptive nor mislead, and should be clearly recognizable as advertising (ICC, 1997). The part of the code specific to children states that advertising should not: exploit the inexperience or credulity of children; mislead them about the nature of the product; have the effect of harming them mentally, physically or morally; nor make them feel inferior to their peers."

246. See, e.g., Kellogg Comment at 8; Kraft Comment, at 3.

247. “Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to . . . nutritional benefits.” See CARU Guides at 4, reprinted in Appendix B [CARU gave the following example of an inquiry applying this guide: “*Advertising and packaging for Unilever’s Popsicle JuicePops contained a statement, real fruit juice pops. CARU determined that children might think they were 100 percent juice when they were about 30 percent and the advertiser eliminated the claim from both advertising and packaging.*” Lascoutx, Tr. II at 37-38] “Snack foods should be clearly depicted as such, and not as substitutes for meals.” See CARU Guides at 5, reprinted in Appendix B.

248. “The amount of product featured should be within reasonable levels for the situation depicted.” See CARU Guides at 5, reprinted in Appendix B [CARU gave the following example of an inquiry applying this guide: “*A commercial for Pringles showed four friends eating out of multiple six-serving containers of Pringles crisps. The advertiser agreed not to continue running the spot during children’s programming.* CARU Comment at 5]; “Children should not be urged to ask parents or others to buy products.” See CARU Guides at 5, reprinted in Appendix B.

249. “Program personalities, live or animated, should not be used to sell products, premiums or services in or adjacent to programs primarily directed to children in which the same personality or character appears.” See CARU Guides at 8, reprinted in Appendix B.

250. CARU gave the following example of how it has applied its guide addressing the depiction of foods in advertising in a way that encourages good nutritional practices. “*An ad for an online promotion for Heinz Bagel Bites contained the line, the more you scarf, the more you can win. CARU believed this encouraged over-consumption of a snack food and the advertiser removed the line from its ads and its website.*” Lascoutx, Tr. 11 at 39. ABC has a provision requiring disclosure in connection with the advertising of breakfast foods: “Each commercial for breakfast type products must include a simultaneous audio and video reference to the role of the product within the framework of a balanced diet.” ABC Television Network Advertising Standards and Guidelines, at 18.

251. CARU Comment at 3.

252. *Id.*

253. NARC issued its report in response to a request from the Grocery Manufacturers of America to highlight for the public the actions taken by CARU against industry ads that violated the CARU Guides. National Advertising Review Council, *White Paper: Guidance for Food Advertising Self-Regulation* (2004) (“NARC White Paper”). More recently, CARU reports that,

since January 2003, there have been 253 individual ads or websites that CARU recommended be modified or discontinued. CARU Comment at 3.

254. In 1991, CARU adopted an “Expedited Procedure” that enabled inquiries to be handled on an informal basis when advertisers established that the advertising was substantiated within ten business days of the commencement of a CARU inquiry, or made changes to the advertising within that period. Although CARU did not write formal opinions on such inquiries, it did publish short summaries. See NARC White Paper at 32-33. NARC abolished the informal inquiry process in 2004.

255. Of the 46 inquiries concerning food advertising announced on the CARU website for the period of 2000-2005, 15 concerned online privacy. Ten more concerned the promotion of sweepstakes. (Staff analysis).

256. Referrals to the FTC are rare. CARU notes that since 2003, there has been one referral to the Commission concerning a company that allegedly breached the CARU Guides provisions on protecting children’s privacy while online. That referral led to an FTC investigation and law enforcement action. See *United States v. UMG Recordings, Inc.*, Civ. Act, No. CV-04-1050 JFW (Ex) (C.D. Cal. Feb. 18, 2003).

257. “The system...relies on compliance and fear of negative publicity – CARU have no sanction to fine or withdraw the advertisement, but if necessary, they can refer the case to the FTC.” Hawkes Comment at 5.

258. Kraft Comment at 2.

259. Wootan, Tr. II at 50.

260. “(T)he advertising industry’s thirty-year experiment with self-regulation has failed. Children see more marketing in more venues than ever before and much of this marketing is for unhealthy food . . . Merely tweaking the existing system of self-regulation is not the answer.” CCFC Comment at 1.

261. PHAI Comment at 2.

262. Harkin, Tr. I at 32.

263. See, e.g., Attachment to PHAI Comment at 10-13. CARU disagreed, saying that it had looked at almost all of those campaigns, and found that the ads either did not violate the guides or were placed in media not directed to children. Staff conversation with Elizabeth Lascoux, Aug. 31, 2005. Another commenter similarly suggested that certain ad campaigns violated GMA’s advertising guidelines, CIFC Comment (June 7, 2005) at 2-4.

264. CCFC Comment at 6.

265. Miller, Tr. II at 73. “I think you have to expand it to more than just marketing. . . . when they were talking about TV ads decreasing, if that, in fact is true, we’re not talking then about marketing, and that’s what I think is changing. You’re talking about branded environments, you’re talking about the advergames, you’re talking about product placement, on and on and on and on, viral marketing as Kathy mentioned. . . .it has to be expanded to include new interactive technology.” *But see* Promotion Marketing Association (“PMA”) Comment at 6. “We urge the agencies to reject inappropriate bans on particular advertising methods that may be unpopular with certain segments of the public interest community.”

266. Molpus, Tr. II at 129. The GMA proposal is set out in Appendix C. Note that the NARC’s definition of “national advertising” appears to cover advertising regardless of the medium.

267. *See supra* note 47.

268. *Id.* at 128-30.

269. For such concerns, see Harkin, Tr. I at 32. One industry member expressed a similar concern about the need for more effective enforcement. As Kellogg indicated in its comment, “to the extent that any company engages in repeat violations involving the same principles or issues, [we] support[] referral to the FTC for additional action.” Kellogg Comment at 12.

270. Berlind, Tr. I at 259.

271. CIFIC Comment (Aug. 12, 2005) at 9.

272. *Id.*

273. *See* “CARU Launching Complete Review of Children’s Advertising Guidelines,” CARU News, Press Release (Feb. 6, 2006).

274. Wootan, Tr. II at 52-54.

275. *Id.* at 54.

276. *Id.* at 52-53.

277. “CARU was created to ensure that advertising directed to children is truthful, accurate, and appropriate for its intended audience. It was not established to be the arbiter of what products should or should not be manufactured, sold, or marketed to children, or to decide what foods are ‘healthy,’ or to tell parents or children what they should or shouldn’t buy.” CARU Comment at

4.

278. Wootan, Tr. II at 52.

279. Snyder, Tr. II at 77: “what’s the consensus that these are the right nutritional standards? ... would the government set these standards? I don’t think the government’s going to do that. I don’t think the government should do that.” *See also* ADA comment at 3. “Several groups, with the best of intentions, have offered what appear on the surface to be logical, straightforward, obvious, and simple solutions to this complex problem. Yet, implementation of these solutions as policy may result in unintended consequences. Simple solutions to complex problems are generally wrong. Do we have evidence that restricting the advertising of certain foods really make a difference in the foods consumed at home?”

280. CARU Comment at 4. In fact, products that are part of Kraft’s “Sensible Solutions” program are selected following a similar approach to the one set out in the CSPI Proposal. *See* Wootan, Tr. II at 90.

281. Wootan, Tr. II at 79: “(S)tates have regulations with nutrition standards for food sales and marketing in schools. The Federal Government has some standards around school meals Kraft has a model that can be looked to. PepsiCo has some nutrition standards for its marketing practice.”

282. Montgomery, Tr. II at 77; Miller, Tr. II at 78.

283. One group commented that it could support the CSPI Proposal only if it were enforced by government, and then only if it applied to all food and beverage products marketed to children because even when companies pitch more healthy branded food to children they encourage them to get in the habit of making food choices based on factors that have nothing to do with nutritional qualities – and often not even on taste – but rather on packaging, premiums, contests, brand licensing and celebrity tie-ins. CCFC Comment at 2 (“any legitimate conversation about marketing . . . must include the point of view that government regulation, not self regulation, is the best way to minimize the negative effect that advertising and marketing have on the health and well-being of children”); *see also* CIFIC Comment (June 7, 2005) at 14 (“Given the overwhelming evidence that the food and beverage industries cannot be trusted to self-regulate, CIFIC does not endorse any policy proposal that would allow them to do so. We have tried that approach and it has failed, miserably.”).

284. Hebebrand, Tr. II at 97.

285. *See, e.g.*, Berlind, Tr. II at 166; Shifrin, Tr. II at 167; Molpus, Tr. II at 168.

286. On February 6, 2006, CARU announced that it will be convening members of the children's advertising industry to launch a complete review of the CARU Guides. According to CARU, the review project will "incorporate the work underway to examine interactive online games, paid product placement in children's television and the appropriate use of third-party licensed characters." *Supra* note 265.

APPENDIX A





AGENDA

July 14-15, 2005

Perspectives on Marketing, Self-Regulation, & Childhood Obesity

Day One:

8:00 AM **Registration**

9:00 AM **Welcome and Introduction**

Keynote Remarks

Chairman Deborah Platt Majoras
Federal Trade Commission

Dr. Lester Crawford
Acting Commissioner, Food and Drug Administration

9:30 AM **Congressional Remarks**

Senator Tom Harkin (Iowa)

9:45 AM **Presentation: Overview of Health Risks with Childhood Obesity and the Research Concerning the Factors Related to Childhood Obesity**

Dr. William Dietz
Director, Division of Nutrition and Physical Activity, CDC, HHS

10:15 AM **Presentation: Ongoing FTC Staff Research Concerning Food Advertising to Children on Television**

Dr. Pauline M. Ippolito
Associate Director, Bureau of Economics, FTC

10:30 AM Break

10:45 AM Panel 1: The Past, Present, and Future of Marketing of Foods to Children

Moderators: Thomas B. Pahl
Assistant Director for Advertising Practices, FTC

Dr. Van S. Hubbard
Director, Division of Nutrition Research Coordination,
NIH, HHS

Panelists:

- Dr. Nancy M. Childs, Professor of Food Marketing,
St. Joseph's University
- Brady Darvin, Senior Director, Strotzman International
- Dr. Sonya A. Grier, Robert Wood Johnson Health &
Society Scholar, University of Pennsylvania
- Jeffrey McIntyre, Senior Legislative and Federal Affairs
Officer, American Psychological Association
- Dr. Elizabeth S. Moore, Associate Professor of Marketing,
University of Notre Dame
- Dick O'Brien, Executive Vice President, Director of
Government Relations, American Association of
Advertising Agencies

12:00 noon Questions from the Audience

12:15 PM Lunch Break

1:15 PM Remarks

Commissioner Pamela Jones Harbour
Federal Trade Commission

1:30 PM Panel 2-A: Current Industry Efforts to Market Foods to Help Improve Children's Health, Including Changes in Products and Packaging

Moderators: Maureen Ohlhausen
Director, Office of Policy Planning, FTC

Dr. Mary B. Mazanec
Director, Division of Public Health Services, ASPE, HHS

Panelists:

- Michael Donahue, Vice President, U.S. Communications and Customer Satisfaction, McDonald's USA
- Bob Goldin, Executive Vice President, Technomic, Inc.
- Kendall J. Powell, Executive Vice President and COO, U.S. Retail, General Mills
- Dr. Rebecca S. Reeves, President, American Dietetic Association
- Abigail L. Rodgers, Vice President of Wellness Strategies and Communication, The Coca-Cola Company
- Dr. Lisa Sutherland, Research Assistant Professor, University of North Carolina

2:30 PM **Questions from the Audience**

2:45 PM **Panel 2-B: **Current Industry Efforts to Market Foods to Help Improve Children's Health, Including Changes in Advertising and Marketing****

Moderators: Michelle K. Rusk
Senior Attorney, FTC

Dr. Howard Zucker
Deputy Assistant Secretary for Health, HHS

Panelists:

- Dr. Daniel S. Acuff, Co-Founder and Director, YMS Consulting
- Mark H. Berlind, Executive Vice President, Global Corporate Affairs, Kraft Foods
- Linda Brugler, Nutrition Marketing Manager, Produce for Better Health Foundation
- Dr. Carol Byrd-Bredbenner, Professor of Nutrition and Extension Specialist, Rutgers University
- Alan Harris, Executive Vice President, Chief Marketing and Customer Officer, Kellogg Company
- Brock Leach, Senior Vice President, New Growth Platforms, and Chief Innovation Officer, PepsiCo, Inc.
- Bob McKinnon, Founder and President, YELLOWBRICKROAD Communications

3:45 PM **Questions from the Audience**

4:00 PM **Break**

4:15 PM **Panel 3:** **Current Media Efforts to Foster Healthier Choices for Children**

Moderators: Rielle C. Montague
 Attorney, FTC

 Dr. Elizabeth Edgerton
 Director of Clinical Prevention, AHRQ, HHS

Panelists:

- Heidi Arthur, Senior Vice President, Group Campaign Director, The Advertising Council
- Jorge Daboub, Vice President of Marketing and Business Development, Univision Television Group
- Ivan J. Juzang, Founder and President, MEE Productions
- Dr. Jennifer Kotler, Director for Knowledge Management, Department of Education and Research, Sesame Workshop
- Victoria Rideout, Vice President, Kaiser Family Foundation
- Marva Smalls, Executive Vice President of Public Affairs and Chief of Staff, Nickelodeon Networks

5:15 PM **Questions from the Audience**

5:30 PM **Open Forum**

6:00 PM **Adjourn for the Day**

Day Two:

8:00 AM **Registration**

8:30 AM **Remarks**

Vice Admiral Richard H. Carmona
Surgeon General

Commissioner Thomas B. Leary
Federal Trade Commission

9:00 AM **Panel 4:** **Current Self-Regulatory and Other Standards for Marketing Food to Children**

Moderators: Richard F. Kelly
Senior Attorney, FTC

Dr. Barbara Schneeman
Director, Office of Nutritional Products, Labeling,
and Dietary Supplements, CFSAN, FDA, HHS

Panelists:

- Charlotte Hebebrand, Food Safety, Health and Consumer Affairs Section, European Commission Delegation
- Elizabeth L. Lascoutx, Director, Children's Advertising Review Unit
- Patti Miller, Vice President and Director of the Children & the Media Program, Children Now
- Dr. Kathryn Montgomery, Professor of Communication, American University
- Wally Snyder, President and CEO, American Advertising Federation
- Dr. Margo Wootan, Director of Nutrition Policy, Center for Science in the Public Interest

10:15 AM **Questions from the Audience**

10:30 AM **Open Forum**

11:00 AM **Break**

11:15 AM **Panel 5:** **Next Steps – What Should the Government and the Private Sector Do to Help Make Children's Diets Healthier and Encourage Responsible Marketing**

Moderators: Mary K. Engle
Associate Director for Advertising Practices, FTC

Dr. Michael O'Grady
Assistant Secretary for Planning and Evaluation, HHS

Presentation: Overview of the Institute of Medicine Studies
Addressing the Marketing of Food & Beverages to
Children

Vivica Kraak
Senior Program Officer, Food and Nutrition Board, IOM

Panelists:

- Mark H. Berlind, Executive Vice President, Global Corporate Affairs, Kraft Foods
- Dan Jaffe, Executive Vice President, Association of National Advertisers
- Dr. Penny Kris-Etherton, Nutrition Committee, American Heart Association
- Brock Leach, Senior Vice President, New Growth Platforms, and Chief Innovation Officer, PepsiCo, Inc.
- C. Manly Molpus, President and CEO, Grocery Manufacturers of America
- Dr. Susan Linn, Associate Director of the Media Center, Judge Baker Children's Center and Harvard Medical School
- Dr. Donald Lee Shifrin, Task Force on Obesity, American Academy of Pediatrics

12:45 PM Closing Remarks

Dr. Michael O'Grady
Assistant Secretary for Planning and Evaluation, HHS

Lydia B. Parnes
Director, Bureau of Consumer Protection, FTC

Please Note: Due to space constraints, persons will be admitted to the FTC Conference Center, 601 New Jersey Avenue, N.W., on a first-come, first-served basis beginning at 8:00 AM on each day of the workshop. Pre-registration does not guarantee that space will be available. Workshop attendees may not save seats for others. Overflow seating will be available at the FTC Headquarters Building, 600 Pennsylvania Avenue, N.W.

Workshop attendees must undergo security screening each time they enter the building, and will need to show a valid form of photo identification, such as a driver's license.

The FTC Conference Center is accessible to people with disabilities. If you need an accommodation related to a disability, please call Todd Dickey at 202-326-3648.



APPENDIX B



Self-Regulatory Guidelines for Children's Advertising

Children's Advertising Review Unit
Council of Better Business Bureaus, Inc.

70 West 36th Street, New York, NY 10018

The Children's Advertising Review Unit Self-Regulatory Guidelines for Children's Advertising

The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus was established in 1974 by the National Advertising Review Council (NARC) to promote responsible children's advertising and to respond to public concerns. The NARC is a strategic alliance of the advertising industry and the Council of Better Business Bureaus (CBBB). The NARC's Board of Directors comprises key executives from the CBBB, the American Association of Advertising Agencies (AAAA), the American Advertising Federation (AAF) and the Association of National Advertisers (ANA). The NARC Board sets policy for CARU's self-regulatory program, which is administered by the CBBB and is funded directly by members of the children's advertising industry.

CARU's Academic and Business Advisory Boards provide guidance on general issues concerning children's advertising. The Academic Advisory Board, composed of leading experts in education, communication, child development, child mental health and nutrition, consults on individual issues and cases, and assists in the review of the Guidelines. The Business Advisory Board, composed of prominent industry leaders, provides guidance in marketing and advertising trends and practices and also assists in the review of the Guidelines.

CARU's basic activities are the review and evaluation of child-directed advertising in all media, and online privacy practices as they affect children. When these are found to be misleading, inaccurate or inconsistent with the Guidelines, CARU seeks changes through the voluntary cooperation of advertisers and Website operators.

Generally CARU reviews advertising in all media directed to children under 12 years of age. To harmonize with the federal Children's Online Privacy Protection Act of 1998 (COPPA) CARU reviews online privacy practices involving children under 13 years of age.

CARU provides a general advisory service for advertisers and agencies and also is a source of informational material for children, parents and educators. CARU encourages advertisers to develop and promote the dissemination of educational messages to children consistent with the Children's Television Act of 1990.

Principles

Seven basic Principles underlie CARU's Guidelines for advertising directed to children under 12:

1. Advertisers should always take into account the level of knowledge, sophistication and maturity of the audience to which their message is primarily directed. Younger children have a limited capacity for evaluating the credibility of information they receive. They also may lack the ability to understand the nature of the personal information they disclose on the Internet. Advertisers, therefore, have a special responsibility to protect children from their own susceptibilities.

2. Realizing that children are imaginative and that make-believe play constitutes an important part of the growing up process, advertisers should exercise care not to exploit unfairly the imaginative quality of children. Unreasonable expectations of product quality or performance should not be stimulated either directly or indirectly by advertising.

3. Products and content which are inappropriate for children should not be advertised or promoted directly to children.

4. Recognizing that advertising may play an important part in educating the child, advertisers should communicate information in a truthful and accurate manner and in language understandable to young children with full recognition that the child may learn practices from advertising which can affect his or her health and well-being.

5. Advertisers are urged to capitalize on the potential of advertising to influence behavior by developing advertising that, wherever possible, addresses itself to positive and beneficial social behavior, such as friendship, kindness, honesty, justice, generosity and respect for others.

6. Care should be taken to incorporate minority and other groups in advertisements in order to present positive and pro-social roles and role models wherever possible. Social stereotyping and appeals to prejudice should be avoided.

7. Although many influences affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner.

These Principles embody the philosophy upon which CARU's mandate is based. The Principles, and not the Guidelines themselves, determine the scope of our review. The Guidelines effectively anticipate and address many of the areas requiring scrutiny in child-directed advertising, but they are illustrative rather than limiting. Where no specific Guideline addresses the issues of concern to CARU, it is these broader Principles that CARU applies in evaluating advertising directed to the uniquely impressionable and vulnerable child audience.

Interpretation of the Guidelines

Because children are in the process of developing their knowledge of the physical and social world they are more limited than adults in the experience and skills required to evaluate advertising and to make purchase decisions. For these reasons, certain presentations and techniques which may be appropriate for adult-directed advertising may mislead children if used in child-directed advertising.

The function of the Guidelines is to delineate those areas that need particular attention to help avoid deceptive advertising messages to children. The intent is to help advertisers deal sensitively and honestly with children and is not meant to deprive them, or children, of the benefits of innovative advertising approaches.

The Guidelines have been kept general in the belief that responsible advertising comes in many forms and that diversity should be encouraged. The goal in all cases should be to fulfill the spirit as well as the letter of the Guidelines and of the Principles on which they are based.

Scope of the Guidelines

The Guidelines apply to advertising addressed to children under twelve years of age in all media, including print, broadcast and cable television, radio, video, point-of-sale and online advertising and packaging. CARU interprets this as including fundraising activities and sponsor identifications on non-commercial television and radio. One section applies to adult-directed advertising only when a potential child-safety concern exists (see Safety, below). Another section addresses children's online privacy (see Interactive Electronic Media).

Product Presentations and Claims

Children look at, listen to and remember many different elements in advertising. Therefore, advertisers need to examine the total advertising message to be certain that the net communication will not mislead or misinform children.

1. Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to, size, speed, method of operation, color, sound, durability and nutritional benefits.
2. The advertising presentation should not mislead children about benefits from use of the product. Such benefits may include, but are not limited to, the acquisition of strength, status, popularity, growth, proficiency and intelligence.
3. Care should be taken not to exploit a child's imagination. Fantasy, including animation, is appropriate for younger as well as older children. However, it

should not create unattainable performance expectations nor exploit the younger child's difficulty in distinguishing between the real and the fanciful.

4. The performance and use of a product should be demonstrated in a way that can be duplicated by the child for whom the product is intended.

5. Products should be shown used in safe ways, in safe environments and in safe situations.

6. What is included and excluded in the initial purchase should be clearly established.

7. The amount of product featured should be within reasonable levels for the situation depicted.

8. Representation of food products should be made so as to encourage sound use of the product with a view toward healthy development of the child and development of good nutritional practices.

9. Advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet.

10. Snack foods should be clearly represented as such, and not as substitutes for meals.

11. In advertising videos, films and interactive software, advertisers should take care that only those which are age-appropriate are advertised to children. If an industry rating system is available, the rating label should be prominently displayed. Inconsistencies will be brought to the attention of the rating entity.

12. Portrayals or encouragement of behavior inappropriate for children (e.g.: violence or sexuality) and presentations that could frighten or provoke anxiety in children should be avoided

13. If objective claims are made in an advertisement directed to children, the advertiser should be able to supply adequate substantiation.

Sales Pressure

Children are not as prepared as adults to make judicious, independent purchase decisions. Therefore, advertisers should avoid using extreme sales pressure in advertising presentations to children.

1. Children should not be urged to ask parents or others to buy products. Advertisements should not suggest that a parent or adult who purchases a product or service for a child is better, more intelligent or more generous than

one who does not. Advertising directed toward children should not create a sense of urgency or exclusivity, for example, by using words like "now" and "only".

2. Benefits attributed to the product or service should be inherent in its use. Advertisements should not convey the impression that possession of a product will result in more acceptance of a child by his or her peers. Conversely, it should not be implied that lack of a product will cause a child to be less accepted by his or her peers. Advertisements should not imply that purchase and use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising.

3. All price representations should be clearly and concisely set forth. Price minimizations such as "only" or "just" should not be used.

Disclosures and Disclaimers

Children have a more limited vocabulary and less developed language skills than do adolescents and adults. They read less well, if at all, and rely more on information presented pictorially than verbally. Simplified wording, such as "You have to put it together" instead of "Assembly required," significantly increases comprehension.

1. All disclosures and disclaimers that are material to a child should be in language understandable by the child audience, legible and prominent. When technology permits, both audio and video disclosures are encouraged, as is the use of demonstrative disclosures.

2. Advertising for unassembled products should clearly indicate that they need to be put together to be used properly.

3. If any item essential to use of the product, such as batteries, is not included, this fact should be disclosed clearly.

4. Information about products purchased separately, such as accessories or individual items in a collection, should be disclosed clearly.

5. If television advertising to children involves the use of a toll-free telephone number, it must be clearly stated, in both audio and video disclosures, that the child must get an adult's permission to call.

a. In print or online advertising, this disclosure must be clearly and prominently displayed.

b. In radio advertising, the audio disclosure must be clearly audible.

6. If an advertiser creates or sponsors an area in cyberspace, either through an online service or a Website, the name of the sponsoring company and/or brand should be prominently featured, (including, but not limited to wording such as "The ... Playground", or "Sponsored by ...").

7. If videotapes, CD-ROMs, DVDs or software marketed to children contain advertising or promotions (e.g. trailers) this fact should be clearly disclosed on the packaging, and the advertising itself should be separated from the program and clearly designated as advertising.

Comparative Claims

Advertising which compares the advertised product to another product may be difficult for young children to understand and evaluate. Comparative claims should be based on real product advantages that are understandable to the child audience.

1. Comparative advertising should provide factual information. Comparisons should not falsely represent other products or previous versions of the same product.
2. Comparative claims should be presented in ways that children understand clearly.
3. Comparative claims should be supported by appropriate and adequate substantiation.

Endorsement and Promotion by Program or Editorial Characters

Studies have shown that the mere appearance of a character with a product can significantly alter a child's perception of the product. Advertising presentations by program/editorial characters may hamper a young child's ability to distinguish between program/editorial content and advertising.

1. All personal endorsements should reflect the actual experiences and beliefs of the endorser. Celebrities and real-life authority figures may be used as product endorsers, presenters, or testifiers. However, extra care should be taken to avoid creating any false impression that the use of the product enhanced the celebrity's performance.
2. An endorser represented, either directly or indirectly, as an expert must possess qualifications appropriate to the particular expertise depicted in the endorsement.

3. Program personalities, live or animated, should not be used to sell products, premiums or services in or adjacent to programs primarily directed to children in which the same personality or character appears.

4. Products derived from or associated with program content primarily directed to children should not be advertised during or adjacent to that program.

5. In print media primarily designed for children, a character or personality associated with the editorial content of a publication should not be used to sell products, premiums or services in the same publication.

6. For print and interactive electronic media in which a product, service, or product/service-personality is featured in the editorial content (e.g., character-driven magazines or Websites, product-driven magazines or Websites, and club newsletters) guideline 4 does not specifically apply. In these instances advertising content should nonetheless be clearly identified as such.

Premiums, Promotions and Sweepstakes

The use of premiums, promotions and sweepstakes in advertising has the potential to enhance the appeal of a product to a child. Therefore, special attention should be paid to the advertising of these marketing techniques to guard against exploiting children's immaturity.

Premiums

1. Children have difficulty distinguishing product from premium. If product advertising contains a premium message, care should be taken that the child's attention is focused primarily on the product. The premium message should be clearly secondary.

2. Conditions of a premium offer should be stated simply and clearly. "Mandatory" statements and disclosures should be stated in terms that can be understood by the child audience.

Kids' Clubs

In advertising to children, care should be taken not to mislead them into thinking they are joining a club when they are merely making a purchase or receiving a premium. Before an advertiser uses the word "club", certain minimum requirements should be met. These are:

1. Interactivity - The child should perform some act constituting an intentional joining of the club, and receive something in return. Merely watching a television program or eating in a particular restaurant, for example, does not constitute membership in a club.

2. Continuity - There should be an ongoing relationship between the club and the child member, for example, in the form of newsletter or activities, at regular intervals.

3. Exclusivity - The activities or benefits derived from membership in the club should be exclusive to its members, and not merely the result of purchasing a particular product.

Please see the Data Collection section of the Guidelines for Interactive Electronic Media for special considerations when fulfilling these requirements in the interactive media.

Sweepstakes and Contests

In advertising sweepstakes to children, care should be taken not to produce unrealistic expectations of the chances of winning, or inflated expectations of the prize(s) to be won. Therefore:

1. The prize(s) should be clearly depicted.
2. The likelihood of winning should be clearly disclosed in language clearly understandable to the child audience (for instance, where appropriate, “Many will enter, a few will win”). In appropriate media, disclosures must be included in the audio portion.
3. All prizes should be appropriate to the child audience.
4. Alternate means of entry should be disclosed.
5. Online contests or sweepstakes should not require the child to provide more information than is reasonably necessary. Any information collection must meet the requirements of the Data Collection section of the Guidelines and the federal Children’s Online Privacy Protection Act (COPPA). [For examples of compliant information collection practices for this purpose, please visit <http://www.caru.org/news/commentary.asp>].

Safety

Imitation, exploration and experimentation are important activities to children. They are attracted to commercials in general and may imitate product demonstrations and other actions without regard to risk. Many childhood accidents and injuries occur in the home, often involving abuse or misuse of common household products.

1. Products inappropriate for use by children should not be advertised directly to children. This is especially true for products labeled, "Keep out of the reach of children." Such inappropriate products or promotions include displaying or knowingly linking to the URL of a Website not in compliance with CARU's Guidelines. Additionally, such products should not be promoted directly to children by premiums or other means. Medications, drugs and supplemental vitamins should not be advertised to children.

2. Advertisements for children's products should show them being used by children in the appropriate age range. For instance, young children should not be shown playing with toys safe only for older children.

3. Adults should be shown supervising children when products or activities could involve a safety risk.

4. Advertisements should not portray adults or children in unsafe situations, or in acts harmful to themselves or others. For example, when athletic activities (such as bicycle riding or skateboarding) are shown, proper precautions and safety equipment should be depicted.

5. Advertisements should avoid demonstrations that encourage dangerous or inappropriate use or misuse of the product. This is particularly important when the demonstration can be easily reproduced by children and features products accessible to them.

Interactive Electronic Media

The guidelines contained in this section highlight issues unique to Internet and online advertising to children under 13. They are to be read within the broader context of the overall Guidelines, which apply to advertising in all media. For these purposes, the term "advertisers" also refers to any person who operates a commercial Website located on the Internet or an online service. Although all other sections of CARU's Self-Regulatory Guidelines for Children's Advertising address advertising directed to children under 12 years of age, in order to harmonize with the Federal Trade Commission's ("FTC") final rule implementing the Children's Online Privacy Protection Act of 1998 ("the Rule"), the guidelines contained in the section on Data Collection below apply to Websites directed to children under 13 years of age.

Just as these new media are rapidly evolving, so in all likelihood will this section of the Guidelines. Advances in technology, increased understanding of children's use of the medium, and the means by which these current guidelines are implemented will all contribute to the evolution of the "Interactive Electronic Media" section. CARU's aim is that the Guidelines will always support "notice", "choice" and "consent" as defined by the FTC, and reflect the latest developments in technology and its application to children's advertising.

Further, these children's Guidelines must be overlaid on the broader, and still developing industry standards, government statutory provisions and definitions for protecting and respecting privacy preferences. These industry standards include disclosure of what information is being collected and its intended uses, and the opportunity for the consumer to withhold consent for its collection for marketing purposes. Thus, in the case of Websites directed to children or children's portions of general audience sites that collect personal information from children, reasonable efforts, taking into consideration available technology, should be made to establish that notice is offered to, and choice exercised by a parent or guardian.

The availability of hyperlinks between sites can allow a child to move seamlessly from one to another. However there is no way to predict where the use of successive links on successive pages will lead. Therefore, operators of Websites for children or children's portions of general audience sites should not knowingly link to pages of other sites that do not comply with CARU's Guidelines.

In keeping with CARU's Principle regarding respecting and fostering the parents' role in providing guidance for their children, advertisers who communicate with children through email should remind and encourage parents to check and monitor their children's use of email and other online activities regularly.

To respect the privacy of parents, information collected and used for the sole purpose of obtaining verifiable parental consent or providing notice should not be maintained in retrievable form by the site if parental consent is not obtained after a reasonable time.

The following guidelines apply to online activities which are intentionally targeted to children under 13, or where the Website knows the visitor is a child. In Websites where there is a reasonable expectation that a significant number of children will be visiting, age-screening mechanisms should be employed to determine whether verifiable parental consent or notice and opt-out is necessitated per the Data Collection section of the Guidelines. These mechanisms should be used in conjunction with technology to help prevent an underage child from going back and changing his age to circumvent the age-screening. Care should be taken so that screening questions are asked in a neutral manner so as not to encourage children to provide inaccurate information to avoid obtaining parental permission. For purposes of this section, these activities include making a sale or collecting data, and do not include the use of "spokescharacters" or branded environments for informational or entertainment purposes, which are addressed in the "Endorsement" and "Disclosure" sections of the Guidelines.

Making a Sale

Advertisers who transact sales with children online should make reasonable efforts in light of all available technologies to provide the person responsible for the costs of the transaction with the means to exercise control over the transaction. If there is no reasonable means provided to avoid unauthorized purchases of goods and services by children, the advertiser should enable the person responsible to cancel the order and receive full credit without incurring any charges. Advertisers should keep in mind that under existing state laws, parents may not be obligated to fulfill sales contracts entered into by their young children.

1. Children should always be told when they are being targeted for a sale.
2. If a site offers the opportunity to order or purchase any product or service, either through the use of a "click here to order" button or other on-screen means, the ordering instructions must clearly and prominently state that a child must have a parent's permission to order.
3. In the case of an online means of ordering, there should be a clear mechanism after the order is placed allowing the child or parent to cancel the order.

Data Collection

The ability to gather information, for marketing purposes, to tailor a site to a specific interest, etc., is part of the appeal of the interactive media to both the advertiser and the user. Young children however, may not understand the nature of the information being sought, nor its intended uses. The solicitation of personally identifiable information from children (e.g., full names, addresses, email addresses, phone numbers) triggers special privacy and security concerns.

Therefore, in collecting information from children under 13 years of age, advertisers should adhere to the following principles:

1. In all cases, the information collection or tracking practices and information uses must be clearly disclosed, along with the means of correcting or removing the information. The disclosure notice should be prominent and readily accessible before any information is collected. For instance, in the case of passive tracking, the notice should be on the page where the child enters the site. A heading such as "Privacy", "Our Privacy Policy", or similar designation which allows an adult to click on to obtain additional information on the site's information collection and tracking practices and information uses is acceptable.
2. When personal information (such as email addresses or screen names associated with other personal information) will be publicly posted so as to enable others to communicate directly with the child online, or when the child will be able otherwise to communicate directly with others, the company must obtain prior verifiable parental consent.

3. When personal information will be shared or distributed to third parties, except for parties that are agents or affiliates of the company or provide support for the internal operation of the Website and that agree not to disclose or use the information for any other purpose, the company must obtain prior verifiable parental consent.

4. When personal information is obtained for a company's internal use, and there is no disclosure, parental consent may be obtained through the use of email coupled with some additional steps to provide assurance that the person providing the consent is the parent.

5. When online contact information is collected and retained to respond directly more than once to a child's specific request (such as an email newsletter or contest) and will not be used for any other purpose, the company must directly notify the parent of the nature and intended uses of the information collected, and permit access to the information sufficient to permit a parent to remove or correct the information.

In furtherance of the above principles, advertisers should adhere to the following guidelines:

1. The advertiser should disclose, in language easily understood by a child, why the information is being requested (e.g., "We'll use your name and email to enter you in this contest and also add it to our mailing list") and whether the information is intended to be shared, sold or distributed outside of the collecting advertiser company.

2. If information is collected from children through passive means (e.g., navigational tracking tools, browser files, etc.) this should be disclosed along with what information is being collected.

3. Advertisers should encourage the child to use an alias (e.g., "Bookworm", "Skater", etc.), first name, nickname, initials, or other alternative to full names or screen names which correspond with an email address for any activities which will involve public posting.

4. The operator should not require a child to disclose more personal information than is reasonably necessary to participate in the online activity (e.g., play a game, enter a contest, etc.).

5. The interactivity of the medium offers the opportunity to communicate with children through electronic mail. While this is part of the appeal of the medium, it creates the potential for a child to receive unmanageable amounts of unsolicited email. If an advertiser communicates with a child by email, there should be an

opportunity with each mailing for the child or parent to choose by return email to discontinue receiving mailings.

Guidelines for the Advertising of 900/976 Teleprograms to Children

These guidelines, promulgated in 1989, have been superseded by a prohibition by the Federal Trade Commission that pay-per-call services cannot be directed to children under 12, unless the service is a "bona fide educational service." Likewise, ads for 900-number services cannot be directed to children under 12, unless the service is a bona fide educational service per section 308.3 (d)(I) of the Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992.

The Children's Advertising Guidelines have been in existence since 1972 when they were published by the Association of National Advertisers, Inc. to encourage truthful and accurate advertising sensitive to the special nature of children. Subsequently, the advertising community established CARU to serve as an independent manager of the industry's self-regulatory program. CARU edited and republished the Self-Regulatory Guidelines for Children's Advertising in 1975, revising them periodically to address changes in the marketing and media landscapes. A major revision in 1996 added a new section addressing children's privacy and data collection on the Internet. The assistance of CARU's Advisory Board, and of other children's advertisers, their agencies and trade associations has been invaluable.

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APPENDIX C



**Written Submission of Manly Molpus
President and CEO, Grocery Manufacturers Association**

On Behalf of

Campbell Soup Company; General Mills, Inc.; The Hershey Company; Kellogg Company; Kraft Foods Inc.; Nestlé USA; PepsiCo, Inc.; Sara Lee Corporation; Unilever United States, Inc.

**Federal Trade Commission and Department of Health and Human Services
Public Workshop on Marketing, Self Regulation and Childhood Obesity
July 15, 2005**

Proposals to Strengthen Advertising Self-Regulation and to Encourage Public-Private Initiatives Promoting Healthy Lifestyles

We would like to thank Secretary Leavitt and FTC Chairman Majoras for their leadership in building understanding around the role of marketing in fostering healthy children's lifestyles. We particularly appreciate this opportunity for the food and beverage industry to participate in the FTC-HHS workshop on July 14-15.

As companies in the food and beverage industry who are also supporters of CARU, we recognize that we have a unique opportunity to help make a spectrum of food choices available to everyone, especially to children, and to use our marketing resources to promote both healthy eating and healthy activity choices. In support of that, we also understand that meaningful, robust self-regulation of children's marketing is in everyone's interest.

We believe the self-regulatory system managed by the National Advertising Review Council and implemented through the National Advertising Division ("NAD") and the Children's Advertising Review Unit ("CARU") has worked well over the years and ensures that advertising meets the highest standards of truth and accuracy. We believe self-regulation can be an even more effective tool and that CARU, in particular, can play a major role in that effort.

In that spirit, we have offered our support to the NAD and CARU for strengthening their efforts in several important respects. In suggesting these improvements, we strongly believe that CARU can continue to be the standard for strong, effective, and credible self-regulation of advertising that American consumers can count on. We will re-commit ourselves to that goal and pledge our companies to providing the financial support that is required.

1. **Build CARU's resources and enforcement capacity.** We believe that CARU staff and resources must be substantially increased in order to effectively implement several of the recommendations suggested here. In addition to ensuring adequate enforcement capacity, expanded staff will allow CARU to continuously improve its effectiveness, and to ensure improved consumer access as described below.
2. **Improve direct consumer access.** We believe consumers, especially parents, should have immediate and direct access to CARU for purposes of expressing concerns about specific advertisements and about children's advertising in general. That could be accomplished by establishing a toll-free consumer response line and website, publicizing the existence of both, and responding to consumers directly regarding complaints and comments.
3. **Improve transparency.** We believe a summary of CARU's regulatory activities should be available to the public on the CARU website and should include a review of complaints filed, against whom, and on what general topic, in addition to final resolutions of those complaints. While such information is provided in written reports to subscribers and is public information, we believe the website ought to provide easy access to an overview of the scope of CARU's regulatory activities.
4. **Broaden involvement and advice to CARU on matters of children's health.** We support augmenting CARU's external advisory boards to provide more expertise on matters related to health, wellness and nutrition and including parents, educators, nutritionists, fitness experts, behavioral experts, and experts on FTC and FDA policy. The expanded advisory board could:
 - Provide expert guidance to the CARU staff during the advertising monitoring and review process.
 - Advise the National Advertising Review Council on suggested improvements to the existing guidelines.
 - Work with advertisers to develop approaches that encourage constructive and consistent healthy lifestyle messages.
5. **Strengthen voluntary pre-dissemination review of ads.** We support strengthening the existing mechanism for pre-review of advertising with the goal of preventing advertising that is not consistent with CARU's guidelines from reaching the marketplace. We envision this as a voluntary mechanism that could be strengthened through the participation by members of an expanded staff and advisory board.
6. **Ensure CARU's guidelines address certain marketing practices as follows:**
 - Expand CARU's guidelines to address advertising contained in commercial computer games, video games and interactive websites.
 - Prohibit paid product placement on children's programming.
 - Appropriate use of third-party licensed characters in advertising.

7. **Build a closer working relationship with FTC and HHS.** We believe robust self-regulation requires effective support from both industry and government. To that end, we would encourage the FTC to look for ways to strengthen its relationship with CARU.

In addition, we believe that government can play a role in helping support private sector initiatives to promote healthy lifestyles. In that regard, we have two recommendations:

1. **Develop an HHS award program that recognizes companies for promoting healthy lifestyles.** We believe that healthy lifestyles originate with healthy environments and individual choices. The private sector, across a wide range of industries, can make a significant contribution by helping to provide consumers with the knowledge, motivation and options to make healthy choices and build healthy habits. An HHS-sponsored program that defines and recognizes meaningful contributions in areas such as employee health and wellness, community activities, consumer communications, product development and public-private partnerships could have a significant impact in mobilizing private sector actions.
2. **Maintain federal funding for healthy lifestyle communication programs, like the HHS/Ad Council “Small Steps” campaign and the CDC’s VERB program or successor campaign.** By supporting the development of comprehensive communication programs, among a wide constituency, the government is not only building awareness, particularly among children, but is substantially contributing to the knowledge base around successful behavioral interventions.

Once we’ve received feedback on our suggestions for strengthening self-regulation from FTC, HHS and other stakeholders at the Workshop, we propose that a task force be assembled to move these ideas swiftly forward, with a fixed deadline for finalizing an implementation plan for the agreed-upon improvements.

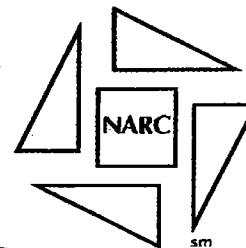
Thank you for your efforts to further understanding and promote constructive solutions. We look forward to your reactions and would welcome further discussions.

APPENDIX D

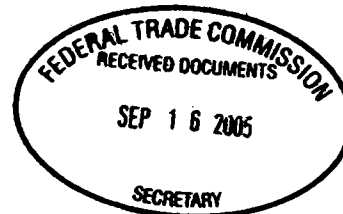


NATIONAL ADVERTISING REVIEW COUNCIL

70 West 36th Street, New York, NY 10018



September 15, 2005



AGENTS

Mr. Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Mr. C. Manly Molpus
President and Chief Executive Officer
Grocery Manufacturers Association
2401 Pennsylvania Avenue, NW, 2nd Floor
Washington, DC 20037

RE: Food Marketing to Kids Workshop - Comment, Project No. PO34519

Dear Messrs. Clark and Molpus:

The National Advertising Review Council (NARC) would like to offer further comment regarding the Federal Trade Commission (FTC) and Health and Human Services (HHS) Workshop on Marketing, Self-Regulation and Childhood Obesity. This letter will provide an update on certain works in progress to reinforce and improve the children's advertising review program, administered by the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB). In doing so, it will address the positive suggestions presented by the Grocery Manufacturers Association (GMA) during the Workshop on behalf of a number of its member companies, and made part of the Workshop record.

Policies for CARU are set by NARC, relying on the practical experience of industry advertising experts and the self-regulatory experience of the CBBB. We are pleased to have been offered the opportunity to participate in the Workshop and to be able to present CARU's record of effectiveness in maintaining a robust, independent and transparent system of self-regulation that has been in place for more than 30 years. We applaud the industry for its compliance rate of more than 95 percent with CARU decisions. We welcome the continued and increased support to which the food industry is committed.

CARU's mandate is clear - to monitor and evaluate advertising messages to children, in all media, for compliance with its *Self-Regulatory Guidelines for Children's Advertising* (the *Guidelines*), many of which impose limitations far beyond those imposed by any law or regulation. CARU was created to ensure that advertising directed to children is truthful, accurate, and appropriate for its intended audience. It is important to recognize that CARU was not established to be the arbiter of which products should or should not be manufactured, sold, or marketed to children, or to tell parents or children which products they should or shouldn't buy.

phone: 212-705-0100 • fax: 212-705-0138 • www.narcpartners.org

The advertising industry's preeminent self-regulation program; administered for NARC by the National Advertising Division (NAD) and the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB).

AAA

AAF

ANA

BBB

Within CARU's mandate, summarized below are some key initiatives being undertaken by CARU, with the support of NARC, to address issues raised at the Workshop.

Improve Direct Consumer Access

CARU has recently established a complaint form on its Website that facilitates receipt of consumer complaints and other contacts with CARU regarding traditional or online media. In addition to the easily accessed complaint form, CARU is at or near the top of the list when one conducts an Internet search on Google, Yahoo! or AltaVista for "children's advertising" or "complain about advertising to children." To make CARU even more broadly visible and accessible to consumers, the CBBB has created a link to the "File a Complaint" pages of the more than 100 Better Business Bureaus as well as BBBOnLine, which may be accessed through the BBB's main Website, www.bbb.org. The Websites which link to the complaint system attract over 20 million visitors annually. The complaint pages themselves generate over 200,000 visits.

In addition to the visibility afforded through the BBB's Website, the other three NARC partners -the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA) and the American Advertising Federation (AAF) - have agreed to provide links to CARU's Website. The CARU Website already has links from industry associations including the GMA, the Toy Industry Association (TIA) and the American Bar Association (ABA). SEARCH: The National Consortium for Justice Information and Statistics, an organization formed by the 50 states' governors to provide quality information on new technology to statewide law enforcement agencies, links to CARU. Additionally, there are links to CARU from law schools and universities in several states and in Canada. We will encourage additional industry, educational and public-interest organization links.

Our goal is to ensure an accessible, user-friendly CARU complaint process that will constantly expand and allow CARU to gather as much relevant information as possible about the claims, time, place, and medium involved in an advertisement. This online complaint procedure (in addition to postal mail and telephone services) is predicated on successful experiences acquired through the BBB system as well as the U.K. and Canadian self-regulatory systems. After full implementation, we will evaluate the effectiveness of the system and the need to consider (or expand to include) other potential systems including, if appropriate, a toll-free number.

Improve Transparency

Transparency is a key attribute for an effective self-regulatory system. Accordingly, CARU and the National Advertising Division (NAD) of the CBBB publish their decisions. National self-regulation is not a confidential mediation or arbitration procedure. CARU's press releases describing its case decisions have always been made available free to all upon request and, since its Website was launched, through its Website. The press releases are transmitted immediately to a press distribution list, which is provided access to the entire case decision as well. Earlier this year, NARC created and filled the position of director of communications to help heighten CARU's public profile.

For several years, CARU and NAD have expanded access to their work through a subscription system that provides an online searchable and printable database of CARU and NAD case decisions. The archive includes all cases opened by CARU and NAD and is searchable by advertiser, brand, product category, chronologically and by date range.

Although members of the general public have been able to obtain individual case decisions free upon request, we recognize that we may be able to ease access, particularly for non-profit organizations that may have a need for decisions on more than a case-by-case basis. Accordingly, NARC is in the process of developing a system by which the public, as well as bona fide public-interest and educational institutions, can more easily access the existing archive of cases through a free subscription. Additionally, once developed, NARC will announce the availability of these archives and will also contact educational, consumer, and parent community groups who might have an interest in these archives.

Broadened Involvement and Advice to CARU on Matters of Children's Health

At the time CARU was established, it was widely understood that children are not just "little adults" and that their cognitive abilities are more limited than those of older children or adults. It was with this in mind that CBBB established CARU and NARC brought it under the umbrella of the existing, successful advertising self-regulation program it sponsored. CARU was established with an advisory board of experts in child development, to look beyond truth and accuracy in ensuring that advertising messages directed to children were clear and understandable to their intended audience.

CARU recognizes that professional expertise from individuals knowledgeable in the areas of education, communication, child mental health and nutrition is crucial. Accordingly, CARU consults with its Academic Advisory Board, composed of leading experts in these fields. These experts assist CARU in the review and application of the *Guidelines*. When a particular ad raises questions about children's perception or cognitive ability to comprehend the message, for example, CARU staff seeks the expert advice of the Academic Advisory Board before opening an inquiry. In the past year, CARU has expanded the board, adding two nutritionists to the already-included experts in child psychiatry, developmental psychology and childhood communications.

With NARC's encouragement and CBBB's support, CARU will continue to expand this group to provide broader input and access to experts who will help guide its decisions. Further, NARC has approved policy changes that will increase the transparency of the program by making any expert opinion relied upon by CARU available to the advertiser and complainants in that case.

NARC is also asking CARU to broaden and enhance its industry support advisory group so that it is inclusive to represent all CARU Supporters. Along with the academic and other experts, this group will better provide valuable insight on children's advertising issues and trends pertinent to the self-regulation program.

It is not the goal or focus of self regulation to provide the industry with specific programs or approaches addressing health issues. In fact, the Advertising Council, supported and funded in part by the trade association members of NARC, has developed programs to help advertisers develop approaches that encourage constructive and consistent healthy lifestyle messages and, when appropriate, we offer the Ad Council NARC's support.

Strengthen Voluntary Pre-Dissemination Review of Ads

Pre-screening of all forms of advertising has long been available as a benefit to CARU Supporters. We agree that this process may help prevent advertising inconsistent with CARU *Guidelines* from reaching the marketplace, but the use of this service is, and will remain,

voluntary. NARC has, however, asked CARU to expand this opportunity to pre-screen and, accordingly, CARU will make its voluntary pre-screening process available to non-Supporters at a reasonable fee.

We appreciate and welcome the GMA and its members encouraging greater awareness of this voluntary pre-screening opportunity for both CARU Supporters and non-Supporters.

Ensure CARU's Guidelines Address Certain Marketing Practices

- *Expand CARU's Guidelines to address advertising contained in commercial computer games, video games and interactive Websites*

CARU's *Guidelines*, as currently applied, do address advertising to children on interactive Websites and CARU routinely reviews these Websites.

Further, CARU has appointed a task force to explore the extent to which new forms of online offerings are included within the self-regulation system's definition of "national advertising," or if not, whether they should be. The task force has been asked to report back to CARU in mid-September. Upon receipt of that report, CARU will prepare a recommendation to the NARC Board for final approval and possible revision of the *Guidelines*.

CARU is also exploring efficient ways to monitor advertising addressed to children on computer and video games.

- *Prohibit paid product placement on children's programming*

CARU is unaware of any current paid product placement in children's television programming, as defined by CARU. However, in order to ensure that its approach to this issue is the appropriate one, NARC has asked CARU to form a task force to determine whether children's programming contains product placement, and if so, whether disclosures or any other approach would be meaningful to children.

- *Appropriate use of third-party licensed characters in advertising*

CARU currently applies its *Guidelines* to all advertising directed to children, including advertising utilizing licensed characters. The *Guidelines* specifically prohibit "host selling" situations. Host selling occurs when a live or animated personality is used to sell products or services in, or adjacent to, programs primarily directed to children in which the same personality or character appears.

Because broader issues suggested by the GMA letter would impact a number of industry segments and constituents whose input is valuable and necessary for further NARC consideration, we will initiate discussion to gather that input.

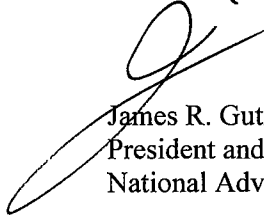
Build a Closer Relationship With the FTC and HHS

NARC and CARU have long enjoyed a strong relationship with FTC, as have NAD and the Electronic Retailing Self-Regulation Program (ERSP). NARC agrees that these relationships should be enhanced and extended to HHS. To that end, in addition to our regular ongoing contacts, we would like to renew a practice of the self-regulation system that hasn't been used in recent years: an annual formal NARC briefing to the FTC on current issues, cases and trends.

This briefing will be provided by the NARC partners to all FTC commissioners, and NARC will work to arrange a similar relationship with HHS.

We look forward to working with the GMA and the rest of the children's advertising industry to enhance the current process, public awareness and public confidence in the self-regulatory system.

Cordially,



James R. Guthrie
President and CEO
National Advertising Review Council

cc: NARC Board
CARU Supporters

