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December 21, 2006

John D. Graubert
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-135, Annex H
Washington, DC 20580

**Re: Food Industry Marketing to Children Report: Paperwork Comment;
FTC File No. P064504**

Dear Mr. Graubert:

The following members of the Children's Media Policy Coalition, specifically Action Coalition for Media Education, Benton Foundation, Children Now, National PTA, and the Office of Communication of the United Church of Christ, Inc., appreciate this opportunity to comment on the Federal Trade Commission's ("FTC" or "Commission") notice to compel information from food and beverage companies on marketing activities targeted to children and adolescents. *Agency Information Collection Activities: Comment Request*, 71 Fed. Reg. 62,109 (Oct. 23, 2006) ("October Notice").

As organizations concerned about excessive, deceptive, or unfair advertising to children, we frequently participate in proceedings at the FCC and FTC. Indeed, we filed comments in

response to *Request for Information and Comment, Food Marketing Practices to Children*, 71 Fed. Reg. 10535 (Mar. 1, 2006) urging the FTC to utilize its authority to compel disclosure of the information needed to prepare the report to Congress on the nature of food marketing to children. *Letter to Donald S. Clark Re: Project No. P064504* (April 3, 2006). We are pleased that the FTC is moving forward to collect the necessary information.

The October Notice states that the FTC intends to gather information from approximately fifty parent companies of food and beverage and quick service restaurant companies that advertise most frequently to children. In addition to companies that advertise fast foods, breakfast cereals, candy, carbonated beverages, dairy products and desserts, the FTC plans to include marketers of fruits and vegetables. 71 Fed. Reg. at 62,110. The FTC plans to seek data in four categories: (1) the types of foods marketed to children and adolescents; (2) the types of measured and unmeasured media techniques used to market products to children and adolescents; (3) the amount spent to communicate marketing messages in measured and unmeasured media to children and adolescents; and (4) the amount of commercial advertising time in measured media directed to children and adolescents that results from this spending. *Id.*

The Notice asks commenters to suggest ways to enhance the quality, utility, and clarity of the information to be collected. We urge the FTC to include major children's media companies in its information request, seek information on all major and emerging types of food marketing directed at children and teens, seek information on market research, require companies to produce data concerning audience reach, and obtain demographic data on the targets and recipients of food and beverage marketing.

A. The Commission Should Include Major Media Companies in its Information Request

While the FTC has appropriately decided to obtain information from the major advertisers of food and beverage products to children and teens, it is also essential to obtain information from media companies, including large child-oriented media companies such as Nickelodeon, Disney, and the Cartoon Network, that present such advertising to children. These companies will have access to data in different formats and will have a different perspective on advertising food products to children. Also, as child-oriented media companies, they are heavily involved in food marketing and food product development.¹ Thus, we urge the FTC to identify the major companies that deliver advertising to children, whether on cable television, broadcast television, the Internet, print, or other methods, and ask them to provide relevant information, including the percentage of their advertising that is directed at children or teens (by age group), is for food or beverage products or companies (by product type), how many children or teens they reach with such advertising (by medium), how much revenue they receive for delivering such advertisements, and other pertinent information.

B. The FTC Should Seek Information on All Major and Emerging Types of Food Marketing Directed at Children and Teens

The FTC intends to seek information about both measured media (including television, print, radio, outdoor advertising, and some forms of Internet advertising) and unmeasured media (in-store marketing, events, package promotions, and product placements). We are concerned, however, that the FTC may have overlooked several important types of marketing to children and teens.

¹ See, e.g., Landon Thomas, *Disney Says It Will Link Marketing to Nutrition*, N.Y. TIMES, October 17, 2006.

1. *In-School Marketing*

In-school marketing has increased steadily over the past decade and has become widely prevalent.² Marketing directed to children in schools is of particular concern because children are a captive audience in schools. As recently noted by the American Academy of Pediatrics, “Ads are now appearing on school buses, in gymnasiums, on book covers, and even in bathroom stalls.”³ Many school districts have contracts with soft-drink companies to sell and advertise their product. Moreover, nearly 25-percent of the nation’s middle and high schools show Channel One, a programming service that contains advertising.⁴ The FTC should require companies to provide all relevant information concerning the nature and extent of their in-school marketing, including the number and ages of students reached, the number of schools involved, the types of activities, and amount of money spent to reach students.

2. *Licensed Characters and Celebrities*

Another widespread method of marketing to children and teens is to associate a product with a popular cartoon or movie character or celebrity.⁵ Use of popular characters “can significantly alter a child’s perception of the product” and inhibits the ability to distinguish between content and advertising.⁶ The FTC should require companies to report how much money they spend (or in the case of media companies, receive) on such character licensing agreements and celebrity endorsements and the types of products they promote through the use of licensed characters and/or celebrities.

² Institute of Medicine, *Food Marketing to Children and Youth* at 187-90 (2006).

³ *Children, Adolescents, and Advertising*, PEDIATRICS, December 2006.

⁴ *Id.*

⁵ See, e.g., Angela J. Campbell, *Restricting the Marketing of Junk Food to Children by Product Placement and Character Selling*, 39 LOY. L.A. L. REV. 447 (2006).

⁶ *Id.* at 488, citing Children’s Advertising Review Unit (CARU), *Self-Regulatory Guidelines for Children’s Advertising* (7th ed. 2003).

3. *Internet*

Although the FTC indicates that it intends to ask about “some forms of Internet advertising,” it is important to get a clear understanding about how advertisers currently use and plan to use the Internet to market food and beverage products to children and teens. Children and teens spend increasing amounts of time using the Internet, and with increased rates of broadband penetration, such use is likely to increase.

To track appropriately the reach and usage of Internet advertising, the FTC should require companies to report on all of the different marketing techniques they are using that involve the Internet or other interactive platforms, including but not limited to promotional websites, banner ads, advergames, direct sales, promotions, viral marketing, and contests.

For each type, companies should report how many children and teens they reach and, where available, how much time the children or teens spend visiting product-related websites or advergames. The FTC should also require companies to report whether they collect any information about or from children and teens via the Internet, cell phones or any other technology. Companies should disclose the specific types of information collected, whether or not it is personally identifiable, how that information is collected, and how it is used.

4. *Cellphone Marketing, Interactive Advertising, Viral Marketing and Other New Forms of Marketing*

A recent Institute of Medicine Report discusses how marketers are using or plan to use new techniques to market to children and teens including cell phone marketing,⁷ viral

⁷ Institute of Medicine, *Food Marketing to Children and Youth 196-97* (2006). With cell phone marketing advertisers can forward food coupons of local establishments to cell phones with Global Positional Systems. GPS allows to the adviser to know where the child is after school dismisses.

marketing,⁸ and interactive advertising.⁹ Another example of a new form of advertising is the Disney Company plan to insert advertisements into its Radio Disney podcasts, which contain music and other content directed at 6 to 14 year olds.¹⁰ Yet another example is word-of-mouth marketing in which companies enlist legions of young people to push their products on other children. Much of the time, these unsuspecting kids have no idea that their friends and classmates are actually paid product endorsers.¹¹ Since advertisers are just beginning to explore the marketing potential of these new technologies, parents are often unaware that these media are being used as platforms to advertise to children. Moreover, as the FTC has recognized, word-of-mouth marketing to children and teens may be deceptive in certain circumstances.¹²

The FTC should require companies to disclose whether or not they are currently using these and any other similar techniques, and if so, apply all of the relevant questions about the amount of money spent and the number and demographics of children and teens that are reached. The FTC should also ask companies to report about other techniques that they plan to use or are considering using over the next several years.

C. The FTC Should Seek Information on Market Research

To be able to provide a comprehensive report to Congress, the FTC should ask companies to disclose the cost, amount and type of marketing research that they use in marketing to children. It should ask whether companies utilize psychological, child development,

⁸ *Id.* at 196. Viral marketing involves paying consumers, either with free products or discounts, to tell their friends about a product. Advertisers find the “cool kids” by monitoring message boards and seeking out the adolescents who post the most attention getting messages.

⁹ *Id.* at 195.

¹⁰ Karan J. Bannan, *Disney Readies Ad-Supported Podcasts*, ADVERTISING AGE, March 17, 2006, available at http://adage.com/article?article_id=107904.

¹¹ Melanie Wells, *Kid Nabbing*, FORBES, February 2, 2004, available at http://www.forbes.com/free_forbes/2004/0202/084.html.

¹² Letter from Mary K. Engle to Gary Ruskin, Dec. 7, 2006.

educational or marketing consultants in their research, and whether companies use children in conducting research or focus groups. If so, companies should report the ages of the children that are involved in any market research. They should also describe the market research techniques employed and where such research is being conducted, e.g., in schools, in homes, online.

D. The Commission Should Require Companies to Produce Data Regarding Actual Audience Reach for Their Marketing Efforts

While we support the FTC's proposal to request information about the amounts spent, and the amount of commercial advertising time directed at children, to provide a complete report to Congress, the Commission must also collect information on the number of children reached by each type of advertising. The amount of money spent is an incomplete indicator of the reach of marketing. Most companies also track their predicted actual reach of marketing campaigns in order to evaluate the efficacy of those campaigns. The FTC would need similar information to accurately understand these campaigns.

It is important to recognize differences among media platforms when identifying the relevant data needed. Marketing information that is pertinent to one medium may not be useful for another. For example, while the amount of time and money spent provides a useful way to measure marketing efforts on television, they do not provide as useful a means to assess Internet and other newer types of advertising.

E. The Commission Should Obtain Demographic Data on the Targets and Recipients of Food Marketing

In asking for information about the amount of money spent, the amount of commercial time, and the reach of marketing efforts, the FTC should require that where possible, such

information be broken down by demographics, *e.g.*, age, race or ethnic group, gender, household income, geographic location, etc.

Information about the ages that are targeted by advertisers and/or exposed to marketing is especially important because children younger than 8 years of age are unable to understand the notion of intent to sell and frequently accept advertising claims at face value.¹³

Information about the race and ethnicity of children and teens that are targeted by advertisers and/or exposed to marketing is also important because studies show that children belonging to certain ethnic minorities and low-income households are at greater risk for obesity and obesity-related illnesses, such as heart disease and diabetes. For example, African-American, Hispanic, and American Indian youth are most at risk as compared to the rest of the population.¹⁴ Twenty-four percent of African-American and Hispanic children are above the 95th percentile of weight for their age group.¹⁵ Moreover, unhealthy food options are promoted disproportionately in poorer neighborhoods.¹⁶ Studies have found that restaurants in poor neighborhoods tend to advertise less healthy items compared to those in more affluent areas, and that cookies and candy are the second most advertised products for magazines and cable channels targeting African-American consumers.¹⁷ Thus, it is important for Congress to obtain information on the race, ethnicity, and other demographic information about the children and teens that are marketed to by food and beverage companies.

¹³ Dale Kunkel, *Children and Television Advertising*, in Singer & Singer, *Handbook of Children and the Media* (2001).

¹⁴ Institute of Medicine, *Childhood Obesity in the United States: Facts and Figures* (2004).

¹⁵ *Id.* at 2.

¹⁶ Marlene Lee, *The Neglected Link Between Food Marketing and Childhood Obesity in Poor Neighborhoods*, (July 2006).

¹⁷ *Id.*

