



# Federal Trade Commission

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## **“WHERE DO WE GO FROM HERE? – SOME THOUGHTS ON THE FUTURE OF THE CONSUMER PROTECTION MISSION”**

**Remarks by J. Thomas Rosch<sup>1</sup>  
Commissioner, Federal Trade Commission**

**before the**

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Consumer Protection Conference  
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Good afternoon. I am delighted to be here today to provide some opening remarks for the ABA’s 2007 Consumer Protection Conference. As many of you know, I have been at the Commission just over a year now, and have had a chance to get a “recent” inside view of the agency in action. I think that the best – and perhaps the most interesting – thing that I can do today is to share with you my “wish list” for the agency’s consumer protection mission over the next several years.

My first wish is on the international front. I think the number one challenge for the next

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<sup>1</sup> The views expressed herein are my own, and do not necessarily represent the views of the Federal Trade Commission or any other individual Commissioner. I would like to express my appreciation to Beth Delaney and Serena Viswanathan for their invaluable contribution to this speech.

decade is how we handle the conflicting regulatory regimes that cover the flow of personal information. Our economy depends in large part on nearly instantaneous transmission of data. Increasingly, this data is traveling across country lines, sometimes several countries in seconds. If we don't get it right – and by “we,” I mean the FTC as well as other international regulatory bodies – we could end up crippling international commerce and perhaps stifling innovation. Commissioner Harbour has just returned from the Asia-Pacific Economic Cooperation Forum in Australia – where the APEC Privacy Framework was an important topic of discussion. She is on the next panel and will be describing the development of cross-border privacy rules, related issues and possible solutions. Suffice it to say for now, international businesses find it extraordinarily difficult to transmit personal information across borders – whether it be employee or customer-related – without running afoul of some countries' privacy laws.

And as a footnote, I don't mean to imply that our skirts are perfectly clean on this front – as you all know, at this point in time, instead of one federal regulatory framework, there is a patchwork of state privacy and data security legislation – where each state can have different requirements with which a company operating on a national level must comply.

My second wish also has to do with international regulatory concerns. I would like to see the agency exploit to the fullest its new statutory authority under the US Safe Web Act – which was just signed into law this past December – to stitch together international cooperative consumer protection enforcement efforts between and among various nations. The Chairman – who is speaking during tomorrow's session – will be talking about that subject in some detail as

well.

In an era where unscrupulous businesses and individuals using Internet and long-distance technology can strike quickly on a global scale, victimize thousands of consumers, and disappear without a trace with their ill-gotten gains – consumer protection in the US is no longer a purely domestic matter. We need the cooperation of our counterparts around the world to combat these abuses. US SAFE WEB offers the unprecedented opportunity to negotiate binding international law enforcement agreements, which will be invaluable in addressing cross-border fraud in the coming years.

My third wish is that the agency (and its counterparts throughout the world) modernize the arsenal of law enforcement remedies to deal with the new consumer protection problems that have arisen within the last couple of decades.

Technological innovation and the impact that it has had on consumers and the marketplace has dramatically changed and increased the challenges we at the Commission face as guardians of consumer welfare. As we have learned, these technological innovations may come with a price tag. For example, spam, spyware, and data security vulnerabilities – things that have had a serious effect on consumers and their welfare – come hand in hand with the development of new technologies.

Our consumer protection law enforcement agenda at the Commission today consists in

large measure of combating practices which threaten to clog consumers' email boxes and/or disable and otherwise impair the performance of their computers through spam, spyware and other forms of malware. Other practices, including but not limited to, the theft of consumers' personal information, threaten basic rights to privacy. It is difficult, if not impossible, to quantify the amount of aggregate, much less individual, consumer injury caused by practices of these kinds. And often, the wrongdoers may not have obtained ill-gotten gains, but may have avoided the costs of handling data securely. So, our standard remedies for deceptive or unfair practices – namely a consumer redress order or a disgorgement order – are frequently impracticable.

Yet, there is a real need to put teeth into orders dealing with these new pernicious practices. Either through Congressional action or through rulemaking action at the Commission, I would like to see the Commission armed with civil penalty authority to provide us with those teeth.

I also would like to see the adoption in other countries of some of the teeth we at the Commission now have. We take for granted today the consumer redress authority, as well as the arsenal of equitable remedies, afforded by Section 13(b) of our statute. But the fact is that numerous other countries around the world, where unfair or deceptive practices may originate – or where such practices originating in the US may inflict injury – do not have these remedies at their disposal. I would like to see internationalization of consumer protection remedies.

Number four on my wish list is a successful attack on the problem of childhood obesity in

this country. As a veteran of the Kid Vid wars in the '70s, when the Washington Post dubbed the FTC the "National Nanny," I am well aware of the political limitations on the Commission using rulemaking or law enforcement action in attacking that particular problem. But childhood obesity is a problem and it will not go away unless and until all the relevant players – including the food and beverage industries, the media, government agencies, school districts, parents, and others – take responsibility to make it go away.

Some steps in the right direction have been taken. For example, the country's top three soft-drink companies agreed to stop selling certain sweetened drinks like soda and iced tea in schools, and to limit the sale of other products at schools to items such as bottled water, 100% fruit juice and low and non-fat milk. They also agreed to limit the sizes of the products that they sell in schools – eight ounces for elementary schools and ten ounces for middle schools.<sup>2</sup>

And, due to the efforts of Jodie Bernstein, along with the Council of Better Business Bureaus and the National Advertising Review Council, the Children's Food and Beverage Advertising Initiative – a voluntary self-regulation program with 10 of the largest food and beverage companies as charter participants – has been established.<sup>3</sup> These companies have agreed that at least half of their advertising directed at children under the age of 12 would

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<sup>2</sup> Marian Burros & Melanie Warner, "Bottlers Agree to a School Ban on Sweet Drinks," New York Times, (May 4, 2006).

<sup>3</sup> Andrew Martin, "Leading Makers Agree to Put Limits on Junk Food Advertising Directed at Children," New York Times, (Nov.15, 2006).

promote healthier foods or contain messages that encourage healthy lifestyles.<sup>4</sup>

But much remains to be done. I would like to see the snack food industry take steps similar to those of the soft-drink companies to limit the types of foods that they make available to children in the school setting, and to offer healthier choices. In addition, I urge more companies to step up to the plate and to join the Children’s Food and Beverage Advertising Initiative sponsored by the BBB and NARC.

My own feeling is that government does have a role to play here. However, I am not sure that the FTC is the federal agency that should play the primary role. In some ways, it can be argued that the advertising and marketing of food and beverages is the tail wagging the dog. More specifically, children consume one or possibly two meals a day at their schools under meal programs funded by the federal government. So, first, I would like to see the Department of Agriculture implement the recommendation made by the Institute of Medicine in its report last year to develop and test new strategies for promoting healthier and more appealing school meals.<sup>5</sup> Second – and this is another recommendation from the IOM – state and local school

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<sup>4</sup> Information about the Initiative is available at [www.cbbb.org/initiative/](http://www.cbbb.org/initiative/). As noted by the Chairman in a recent speech, the Initiative has real promise and the Commission will be closely watching its effect. However, if messages that encourage physical activity are “always accompanied by promotion of a food or drink high in calories or low in nutritional value, it is unclear whether a true ‘healthy lifestyle’ message will be conveyed.” See Chairman Deborah Platt Majoras, “*Advertising Resolutions for the New Year*,” Association of National Advertisers, (Jan. 17, 2007), available at [www.ftc.gov/speeches/majoras/070117adresnewyear.pdf](http://www.ftc.gov/speeches/majoras/070117adresnewyear.pdf).

<sup>5</sup> See Institute of Medicine, “*Food Marketing to Children and Youth: Threat or Opportunity?*” (2006), p. ES-12.

authorities should promote healthy diets for children in all aspects of the school environment, through education, the monitoring of commercial relationships, and the development and implementation of nutrition standards for foods and beverages sold outside the federal breakfast and lunch programs.<sup>6</sup> If it takes prodding from our agency to accomplish this, so be it.

At the end of the day though, children also consume food outside of the school environment and statistics indicate that an increasing amount of that consumption consists of the fare of fast food restaurants.<sup>7</sup> Studies have shown that the over-consumption of fast food is likely to contribute to overweight and obesity.<sup>8</sup> I would like to see fast food companies offer healthier choices for children. One way this can be accomplished is to change the default options in side orders and beverages to things like applesauce, carrot sticks, low and non-fat milk, or 100% fruit

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<sup>6</sup> *Id.* at p. ES-11. It may be most appropriate for the responsibility of restricting the availability of “competitive” foods in the school environment to be placed upon local and state school authorities. Although the Department of Agriculture has rules about the nutritional requirements for foods served in the school lunch program and also has some restrictions on “competitive food services” – *a la carte* food items sold in the lunch area during the lunch period (*see* 7 C.F.R. Part 210.11) – a 1983 court opinion held that the Department had exceeded its authority when promulgating other “time and place” limitations upon the sale of competitive foods in schools. *National Soft Drink Ass'n v. Block*, 721 F.2d 1348 (D.C. Cir. 1983).

<sup>7</sup> *See, e.g.*, Institute of Medicine, “*Food Marketing to Children and Youth: Threat or Opportunity?*” (2006), p. 2-27; and Biing-Hwan Lin, Joanne Guthrie, and Elizabeth Frazzo, “*American Children's Diets Not Making the Grade*,” *Food Review*, Volume 24, issue 2, (May-Aug. 2001).

<sup>8</sup> *See e.g.*, Shanthy A. Bowman, PhD, Steven L. Gortmaker, PhD, Cara B. Ebbeling, PhD, Mark A. Pereira, PhD, and David S. Ludwig, MD, PhD, “*Effects of Fast-Food Consumption on Energy Intake and Diet Quality Among Children in a National Household Survey*,” *Pediatrics*, (January 2004), pp. 112-18; Marla Reicks, “*Fast-Food Consumption Among Minority Adults and Adolescents*,” University of Minnesota, Department of Food Science and Nutrition, (January 2005), available at [www.fsci.umn.edu/pf/outreach/faculty\\_outreach/nutrinet/archives/january\\_2005/fast\\_food.html](http://www.fsci.umn.edu/pf/outreach/faculty_outreach/nutrinet/archives/january_2005/fast_food.html).

juice. Disney has implemented this system in their theme parks – if a child wants to get french fries or soda, the parent has to change the order from the default.<sup>9</sup> If changes like this take prodding from the Commission, also so be it.

My final wish has to do with antitrust. As you know, the Commission’s law enforcement mission is frequently described as two-fold: namely, its competition mission and its consumer protection mission. Over the years, antitrust theory has focused more and more on consumer welfare. I would like to see that reflected in our law enforcement and educational initiatives on the competition side. I think we already do a pretty fair job in this respect. You might be surprised at the extent to which staff memoranda from the Bureau of Competition incorporated basic consumer protection tenets, such as the importance of the dissemination of complete and accurate information to consumers.

I also think that our consumer protection initiatives need to take into account as fully, the impact that those initiatives may have on competition. I know that in the ‘70s, when I was last at the Bureau of Consumer Protection, sometimes we were not always on the same page with the Bureau of Competition. I would like to ensure that that does not happen again. The Bureau of Consumer Protection has been instrumental in fashioning remedies in problem areas which enhance competition as well as protect consumers – its implementation of the Funeral Industry Rule is a good example. In the future, I think that there are other areas, such as the real estate

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<sup>9</sup> Landon Thomas, Jr., “*Disney Says It Will Link Marketing to Nutrition,*” New York Times, (Oct. 17, 2006).



industry, or the technology sector, where the Bureau can play a similar role.

Of course, this list is illustrative and not exhaustive – the work at the Commission affords many opportunities for innovative thinking and new approaches. Thank you for time and attention.