

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

ON THE

**INTERAGENCY WORKING GROUP ON FOOD
MARKETED TO CHILDREN**

Before the

**House Energy and Commerce Committee
Subcommittee on Commerce, Manufacturing, and Trade
and the
Subcommittee on Health**

United States House of Representatives

Washington, D.C.

October 12, 2011

Chairmen, Ranking Members and Members of the Committee and Subcommittees, I am David C. Vladeck, Director of the Bureau of Consumer Protection of the Federal Trade Commission (FTC or Commission).¹ The Commission is pleased to have this opportunity to provide information about the FTC's efforts to address childhood obesity and, in particular, to describe our participation in the Interagency Working Group on Food Marketed to Children and to highlight the Group's progress in recent months. Simply put, the Commission and other agencies are taking into account the comments of stakeholders, including input from members of Congress, and substantially modifying the Working Group's recommendations.

Working Group Charge

As you are aware, the Interagency Working Group was convened in 2009 in response to a bipartisan effort led by Senator Harkin and former Senator Brownback. The Working Group, with its four member agencies – the Centers for Disease Control and Prevention (CDC), the FTC, the Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA) – was charged by the Appropriations Committee with developing nutrition standards for foods marketed to children and defining the scope of marketing to which those standards would apply.

Specifically, the directive set out in the accompanying statement to the 2009 Omnibus Appropriations Act (H.R. 1105) reads:

¹ This written statement represents the views of the Federal Trade Commission. My oral presentation and responses to questions are my own and do not necessarily represent the views of the Commission or of any Commissioner.

The FTC, together with the Commissioner of the Food and Drug Administration, the Director of the Centers for Disease Control and Prevention, and the Secretary of Agriculture, who have expertise and experience in child nutrition, child health, psychology, education, marketing, and other fields relevant to food and beverage marketing and child nutrition standards shall establish the Interagency Working Group on Food Marketed to Children (Working Group). The Working Group is directed to conduct a study and develop recommendations for standards for the marketing of food when such marketing targets children who are 17 years old or younger or when such food represents a significant component of the diets of children. In developing such standards, the Working Group is directed to consider (1) positive and negative contributions of nutrients, ingredients, and food (including calories, portion size, saturated fat, *trans* fat, sodium, added sugars, and the presence of nutrients, fruits, vegetables, and whole grains) to the diets of such children; and (2) evidence concerning the role of consumption of nutrients, ingredients, and foods in preventing or promoting the development of obesity among such children. The Working Group will determine the scope of the media to which such standards should apply. The Working Group shall submit to Congress, not later than July 15, 2010, a report containing the findings and recommendations of the Working Group.²

This testimony will describe the Commission's efforts to fulfill that charge by developing recommendations to Congress for voluntary principles to guide industry self-regulation. The testimony will focus on the FTC's role, as the agency with marketing expertise, to develop workable parameters for defining children's marketing. This testimony leaves to the Department of Health and Human Services (HHS) and USDA, as the agencies with health and nutrition expertise, the discussion of how the Working Group is shaping its proposal on the nutritional principles for food marketed to children. First, however, the Commission would like to put this current effort in context by explaining the FTC's activities preceding the formation of the Working Group.

² Omnibus Appropriations Act, 2009, Division D – Financial Services and General Federal Government, Appropriations Act, 2009, Pub. L. No. 111-8, House Appropriations Committee Print at 983-84.

FTC Focus on Self-Regulation

The FTC has long been an advocate for strong and meaningful self-regulation to improve the nutritional profile of the foods marketed directly to children. Childhood obesity now represents one of the most serious and costly health threats facing the United States. Over the past three decades, rates of obesity have grown at an alarming pace.³ Tackling childhood obesity is a complex task that requires the combined and cooperative efforts of all segments of society – family, schools, communities, government, and the marketplace.

In keeping with our jurisdiction and expertise, the FTC’s efforts have focused on the marketplace. The Commission has always taken the view that, regardless of whether or to what extent food marketing may have contributed to the problem of childhood obesity, it is clear that marketing can be an important part of the solution. Marketing can be an effective tool to encourage children to make more healthful choices, and many food marketers have already pledged to play a role in improving children’s nutrition and health through marketing.

In addition, the Institute of Medicine has reported that there is strong evidence that television advertising influences the food and beverage preferences, purchase requests, and short-term diets of children under 12.⁴ That evidence does not factor in the other avenues, in addition to TV advertising, that marketers use to reach children. The FTC’s 2008 report to Congress on food marketing expenditures and activities revealed that, in the year studied, the

³ Prevalence of Obesity Among Children and Adolescents: United States, Trends 1963-65 Through 2007-2008, available at www.cdc.gov/nchs/data/hestat/obesity_child_07_08.htm.

⁴ Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?* (The National Academies Press 2006) at 307-308. The IOM also found strong evidence that exposure to television advertising is associated with adiposity in both children under 12 and teens 12-18 years. The IOM noted that “even a small influence, aggregated over the entire population of American children and youth, would be consequential in impact.” *Id.* at 308.

industry spent more than \$1.6 billion dollars to market food to children using not just TV advertising, but also highly integrated marketing campaigns that weave together Internet, digital marketing, word of mouth, cross-promotions with popular movies, in-school activities, and many other techniques.⁵ The Commission's efforts to date have been to encourage food companies to harness that tremendous marketing power and creative know-how to encourage children to eat nutritious foods. The Commission appreciates, however, that to be successful in this endeavor food companies must be given leeway to shape an approach that will promote children's health, without being overly burdensome on industry.

The focus on industry self-regulation has produced positive results. The FTC's first workshop on this issue was in 2005 – a joint effort with HHS – and resulted in the 2006 report to Congress. The Commission firmly believes that the FTC/HHS report was directly responsible for the 2006 launch of a major initiative by the food industry and that subsequent reports have led to the impressive expansion of that initiative since its launch. The 2006 report commended the early efforts of individual food advertisers to promote healthier choices and the efforts of the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB) to foster responsible advertising. One of the report's key recommendations to food companies was to “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

⁵ FTC, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation*, Report to Congress (July 2008). The FTC is currently completing a follow-up study of food marketing to children and adolescents, which it plans to submit to Congress later this year.

lower-calorie, more nutritious products.”⁶ The agencies emphasized the value of a self-regulatory approach, noting that “effective industry self-regulation can have significant benefits, and can, in many instances, address problems more quickly, creatively, and flexibly than government regulation.”⁷ The joint report also pointed out another obvious advantage to self-regulation – that it is “particularly beneficial in instances where it covers marketing activities that the FTC, FDA, and other agencies lack the authority to challenge.”⁸ The Children’s Food and Beverage Advertising Initiative (CFBAI), under the supervision of the CBBB, was launched later that same year.⁹

The Commission has publicly supported the CFBAI’s effort to develop a self-regulatory program, from its inception, and has encouraged broad industry participation in the initiative. The Commission has been pleased to see the program grow from its 10 charter companies to its current 17 members, representing 75 percent of total food and beverage advertising to children.¹⁰ Along the way, the FTC has pointed to areas where the program could be strengthened, and the interaction between the CFBAI and the Commission has always been constructive.

⁶ The joint FTC/HHS workshop was held in July 2005, and a report issued in April 2006. FTC/HHS, *Perspectives on Marketing, Self-Regulation, and Childhood Obesity: A Report of a Joint Workshop* (April 2006), Exec. Summary at iii-iv.

⁷ *Id.* at 39, quoting former FTC Chairman Deborah Majoras.

⁸ *Id.* at 39.

⁹ At its launch, the initiative consisted of pledges by ten food, beverage, and restaurant companies to adhere to their own individualized nutrition principles when marketing foods to children.

¹⁰ Council of Better Business Bureaus, *The Children’s Food & Beverage Advertising Initiative in Action: A Report on Compliance and Implementation During 2009* (Dec. 2010) at I.

Working Group Process

The FTC's participation in the Interagency Working Group has been shaped by the agency's commitment to making industry self-regulation work. Children's health is the ultimate goal, and marketing of more nutritious foods is one effective tool to help achieve that goal; however, we cannot ask more of food marketers than they can reasonably deliver if we expect their continued cooperation in this effort. Our commitment to finding the best balance between what is best for children's health and what is workable for industry has guided this entire process. The Commission has neither the desire nor the authority to promulgate regulations governing the marketing of food to children. The Working Group's proposal is strictly voluntary. The Commission recognizes that some forms of regulatory action could raise First Amendment concerns.

One of the first steps the Working Group took, before commencing work on its initial proposal, was to conduct a thorough review of all of the existing self-regulatory models. This included the pledges of the CFBAI member companies, as well as other nutrition standards for children's food marketing developed by private/public partnerships, most notably the Alliance for a Healthier Generation's guidelines on the sale of competitive foods and beverages in schools. Much more went into the study-phase of the Working Group's process: a review of the available literature on food marketing to children (both the FTC's 2008 study of food marketing activities and expenditures, and other relevant reports by the Institute of Medicine) and a review of current federal nutrition policy and the science behind it (most notably the 2010 Dietary Guidelines for Americans (DGA) and the Dietary Advisory Committee Report on which the 2010 DGA are based). Throughout that process, the Working Group continued to return to what would be reasonably achievable for industry. USDA staff, for instance, generated multiple food

analyses to allow the Working Group to assess how different variations of proposed nutrition principles would impact foods currently marketed to children.

The Working Group decided to preview its preliminary efforts at a public workshop¹¹ and then to more formally solicit stakeholder comment by issuing a draft of the proposed principles in April 2011.¹² The Working Group wanted to ensure that the recommendations set out in its final report to Congress would be strong and also pragmatic. The Working Group did not want to be in a position of making recommendations to Congress without having provided an opportunity for those stakeholders most affected by the recommendations to provide their input. The goal is to strengthen self-regulatory efforts, not stifle them.

The Working Group's draft generated strong reactions from industry and public health advocates alike. The Working Group received 29,000 comments, including more than 28,000 from write-in campaigns supporting the proposal.¹³ The 100 or so substantively distinct comments from industry and advocacy groups were divided in support or opposition to the proposal. A common theme of industry comments was that the proposal was simply unworkable and should be withdrawn. Consumer and public health organizations strongly supported the

¹¹ FTC Public Forum, *Sizing Up: Food Marketing and Childhood Obesity* (Dec. 15, 2009), *forum materials and transcript available at* www.ftc.gov/bcp/workshops/sizingup/index.shtml.

¹² Interagency Working Group on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts – Request for Comments (April 28, 2011), *available at* www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf. During the 75-day comment period, the Working Group also hosted a public forum to provide additional opportunity for stakeholder input. A transcript of the May 24, 2011 forum is available at www.ftc.gov/bcp/workshops/foodmarketingtokids/transcript.pdf.

¹³ All unique comments submitted during the comment period are available at www.ftc.gov/os/comments/foodmarketingstudy/index.shtm.

proposal as one that would significantly improve the nutritional profile of foods marketed to children.

Perhaps most important, the comment period provided an opportunity for the CFBAI to finalize and submit to the Working Group a uniform set of nutrition principles of its own. The CFBAI proposal is considerably stronger than the current individual pledges of the member companies, and also reasonably achievable within a shorter time frame than the five years initially proposed by the Working Group.¹⁴ The Working Group recognizes that the CFBAI effort represents substantial progress by industry and that its approach warrants careful consideration.

As a result of the many comments we received from various stakeholders and an assessment of the CFBAI proposal, the Working Group is in the midst of making significant revisions to its preliminary proposal. The anticipated revisions go a long way to address industry's concerns and share much in common with the new CFBAI uniform nutrition standards. Although the report is not yet final, the following highlights some of the more significant revisions contemplated for defining the scope of children's marketing to which the nutrition recommendations would apply.

¹⁴ CFBAI proposed limits on calories, saturated fat, trans fat, sodium and total sugars across ten categories of foods and also proposed minimum contributions of nutrients to encourage for each category. The CFBAI members committed to meeting these uniform nutrition principles for all foods marketed to children by their companies before 2014.

Key Aspects of Recommendations on Scope of Children’s Marketing¹⁵

The FTC’s primary role in the Working Group has been to define the scope of children’s marketing to which the nutrition recommendations developed by the CDC, FDA, and USDA would apply. Since issuing the preliminary proposal in April, which broadly covered all forms of marketing to children ages 2 to 17 years (as required by the Appropriations Committee), the Commission has taken a fresh look at the marketing recommendations and is contemplating revising them to more narrowly focus on those marketing techniques that our studies suggest are used most extensively to market to children.

The Commission is making a real effort to avoid pulling in marketing activities that are family-oriented or directed to a more general audience and to limit the revised approach to marketing that more exclusively targets the child only. The Commission staff believes that this approach resolves many of the flashpoints that generated strongest industry concern. For instance, FTC staff has determined that, with the exception of certain in-school marketing activities, it is not necessary to encompass adolescents ages 12 to 17 within the scope of covered marketing. In fact, it is often difficult to distinguish marketing designed to appeal to this age group from marketing directed to a general or adult audience. In addition, the FTC staff believes that philanthropic activities, charitable events, community programs, entertainment and sporting events, and theme parks are, for the most part, directed to families or the general community and do not warrant inclusion with more specifically child-directed marketing. Moreover, it would be counterproductive to discourage food company sponsorship of these activities to the extent that

¹⁵ The revisions described in this section are recommendations contemplated by the Working Group and have not yet been formally approved by the member agencies. The report will be voted on by the Commission and submitted for final approval by HHS and USDA before it is submitted to Congress.

many benefit children’s health by promoting physical activity. Finally, the Commission staff does not contemplate recommending that food companies change the trade dress elements of their packaging or remove brand equity characters from food products that don’t meet nutrition recommendations.¹⁶ These elements of packaging, although appealing to children, are also elements of marketing to a broader audience and are inextricably tied to the food’s brand identity.

The marketing activities we contemplate for inclusion within the scope of children’s media are those that are used most extensively to specifically target children ages 2 to 11: traditional media, including television, print, and radio; online, digital, and social marketing; advertising or product placement in movies and video games; and certain specific marketing techniques like cross-promotions, sweepstakes, and premiums. In addition, the Commission staff contemplates covering marketing activities in schools for both children and adolescents.

The Commission staff has also reexamined the approach to the criteria proposed for assessing whether marketing in these categories is directed to children and is recommending revisions to ensure that the criteria are flexible enough to be neither over-inclusive – covering marketing to a general or family audience – nor under-inclusive – leaving out marketing that is clearly targeted to children.¹⁷

¹⁶ The FTC staff is also recommending to the Working Group that in-store displays and packaging of seasonal or holiday confections not fall within the scope of covered media because they are not marketing directed to children, as much as marketing to parents or other adults.

¹⁷ The Commission is also proposing adjusting its proposed audience share criterion for the traditional media marketing category (television, print, and radio) from 30 percent children ages 2 to 11 years, to the same 35 percent audience share used by the CFBAI member companies.

As currently contemplated, the Working Group recommendations on the scope of children's media are substantially similar to the approach used currently by the vast majority of companies participating in the CFBAI self-regulatory program and will cover all the most important aspects of children's marketing without being unduly restrictive.

Conclusion

The Commission thanks this Committee for focusing attention on the challenging question of how to combat childhood obesity and for giving the Working Group members an opportunity to discuss our shared goal of improving children's health.