



Federal Trade Commission

Self Regulatory Organizations and the FTC

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Council of Better Business Bureaus

I. Introduction

Thank you. I am delighted to appear here today at the semi-annual meeting of the Council of Better Business Bureaus (“BBB” or “Council”). The BBB has long been an important advocate for American consumers and an ally of the Federal Trade Commission in our efforts to fight fraud and deception in the marketplace. Indeed, the BBB is one of the most well-known and trusted consumer advocates in our nation, as countless times per day, persons can be heard telling a family member reassuringly, “I will call the BBB,” or telling an unscrupulous marketer threateningly, “I will call the BBB!”

In his invitation to me, Ken Hunter observed that the BBB’s self-regulation mechanisms, including your dispute resolution and advertising review programs, closely parallel the consumer protection mission of the FTC. A glance at our many areas of collaboration confirms this view. Tips from local BBBs about troubling complaint patterns have been instrumental in helping the

¹The speech was prepared with the assistance of Maureen K. Ohlhausen, Acting Director of the Office of Policy Planning; Paul Pautler, Deputy Director for Consumer Protection of the Bureau of Economics; Lee Peeler, Deputy Director of the Bureau of Consumer Protection; and Rielle Montague, an attorney in the Commission's Division of Advertising Practices. The views expressed herein are my own and do not necessarily represent the views of the Federal Trade Commission or of any other individual Commissioner.

FTC's law enforcement staff quickly identify potential fraud cases. Local BBB offices have contributed more than 70,000 complaints to the FTC's Consumer Sentinel Fraud Database, which is used not only by the FTC but also by some 1,200 other law enforcement agencies, including Canadian and Australian agencies. During the course of investigations, our staff are frequently in contact with local BBBs, which provide critical investigative assistance. In addition, local BBBs are an important distributor of our consumer and business education materials, and our regional office staff frequently participate in BBB-sponsored education programs. On behalf of the FTC, I thank you for being a strong partner in our mission of protecting consumers, and I ask you to continue maintaining the same high level of collaboration. As I told our staff in an address to them last month, we can "take nothing for granted, save the need to improve."² New challenges to consumers mandate that we get as much as we can from our resources, making the best use of every tool we have and continuing to partner with other agencies and organizations that share our commitment.

Among the tools in the toolbox are self-regula

that otherwise likely would not be possible without some form of government intervention.

Self-regulation has its fair share of skeptics. Ours is a nation of laws, and many see solutions to consumer problems effectively provided only through legislation and government regulation. Others cannot accept that industry participants will ever find it in their interest to comp

purchased products, the qualities of which purchasers can readily evaluate.³

Some products, however, are purchased infrequently or have attributes that are harder for a consumer to verify, which means that market discipline could be less effective. In these cases, self-regulatory initiatives may improve the market process by providing consumers with additional information that they cannot easily obtain on their own. Self-regulation also can benefit reputable sellers, who not only lose sales to dishonest competitors but also suffer when such behavior makes consumers distrustful and less willing to participate in the market.

There are hundreds, if not thousands, of trade groups and self-regulatory organizations that provide, to varying degrees, various functions that can be most efficiently and lawfully provided by some level of coordinated action. These entities can help markets work more efficiently if they reduce transaction costs or production costs, increase interchangeability or compatibility, reduce consumer risk, or set ground rules upon which competition can flourish.

Some trade groups exhort members to higher standards. Membership in such organizations may provide credibility for new firms, and the organization may devise industry-wide rating systems or standards that provide product or behavioral advantages for the industry as a whole.

Some organizations act as “third-party” certifiers of products or firm behavior. Provided such organizations have sufficient independence from those they certify, they can provide a great deal of assurance to consumers that the firms or their products have passed a minimal standard of

³Of course, the FTC and the BBB well know that some sellers base their business plans on deception and may not expect to satisfy a set of repeat customers. They choose, instead, to engage in deceptive marketing of a product for as long as possible until enforcement officials catch up with them. We have an active and vigorous program devoted to detecting and prosecuting these companies.

Well-constructed industry self-regulatory efforts may offer several advantages over government regulation. First, self-regulation is likely to be more prompt, flexible, and responsive than traditional statutes and regulations. Self-regulatory organizations often have the

quite effective. Self-regulatory dispute resolution might also be less adversarial and more efficient than more formal legal or regulatory procedures for both disputes between member firms and between consumers and firms. And if the process is sufficiently objective and

Finally, putting on my antitrust hat, self-regulatory procedures must not be used inappropriately to weaken competition and create barriers to entry or innovation.⁷ Depending on the type of activity, this can be more or less of a problem, but it clearly at times has been a concern with self-regulation of various professions, such as engineers and lawyers,⁸ and in the design and installation of electrical wiring systems.⁹

IV. Examples of Self-regulatory Activities and Organizations

Advertising

⁷The Commission has challenged self-regulatory programs that allegedly restrict competition unduly and harm consumers. *See, e.g., In the Matter of California Dental Ass'n*, 121 F.T.C..57eM

Since it was formed in 1971 to foster truth and accuracy in national advertising through voluntary self-regulation, the BBB's own National Advertising Review Council (NARC) has earned a reputation as an effective industry self-regulation program. It sets FTC-like standards for truth and accuracy in advertising, which then are enforced through the National Advertising Division ("NAD"). NAD investigates challenges from other advertisers and from monitoring of traditional and new media, including the Internet, and most matters are resolved at this level. If, however, the advertiser is not satisfied with the NAD's decision, the matter may be appealed to the National Advertising Review Board ("NARB").

content of alcohol ads, prohibiting ads that promote the intoxicating effects of alcohol and depictions of excessive drinking and of lewd sexual activity. Most importantly, they prohibit content targeted primarily to persons below the legal drinking age.

As I noted previously, one advantage of meaningful industry self-regulation is that it permits industry to address important issues of concern to the public, without raising the same First Amendment issues that government regulation would pose. The industry's voluntary alcohol advertising codes, by limiting the underage audience to 30%, set a bright-line standard that reduces the likelihood that alcohol ads will appear in media that appeals primarily to those under the legal drinking age.

Since 1999, the FTC has encouraged these trade associations to strengthen their programs.¹² We have asked them to adopt third-party review system

protected speech, the advertising and marketing of these products also poses special constitutional challenges. In response to public concerns about the violent content of their products and its suitability for children, the motion picture (MPAA), music recording (RIAA), and electronic game (ESA) industries each have in place a self-regulatory system that rates or labels products in an effort to help parents seeking to limit their children's exposure to violent materials.¹⁵ Their systems govern the placement of advertising for Restricted (R)-rated movies, Mature (M)-rated games, and Explicit-Content Labeled recordings in media popular with teens and require the disclosure of rating and labeling information in advertising and on product packaging.

At the request of the President and Members of Congress, 2parents seekinJune8.999TBT/Lent and Mem

engaged in marketing practices that undermined the self-regulatory systems that the industries themselves put into place, as well as instances in which other members did more than their industry required.

The Commission found substantial compliance by movie and game marketers with voluntary, self-regulatory standards requiring the disclosure of rating and labeling information in advertising and product packaging. Marketers of music also complied with such self-regulatory standards, but to a far lesser extent. The Commission also found encouraging widespread compliance by the movie and game industries with existing guidelines limiting ad placements for violent R- and M-rated entertainment products in media with a large percentage of teens in the audience.

Despite some of the positive self-regulatory efforts of the entertainment industry, the Commission still has had concerns about certain practices. In late 2003, the FTC sponsored a public workshop to discuss the state of self-regulation in the entertainment industry and children's access to inappropriate products. In March 2004, the Commission announced the expansion of its consumer complaint system to categorize and track complaints about media violence, including complaints about the advertising, marketing, and sale of violent movies, electronic games, and music. The Commission issued a fourth follow-up report on July 8, 2004, which showed the elimination of the most egregious practices discovered in the 2000 report and

(2001), *available at* <http://www.ftc.gov/os/2001/12/violencereport1.pdf>; FTC, *MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A TWO-YEAR FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES* (2002), *available at* <http://www.ftc.gov/reports/violence/mvecrpt0206.pdf>; FTC, *MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A FOURTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES* (2004), *available at* <http://www.ftc.gov/os/2004/07/040708kidsviolencrpt.pdf>.

weight loss products included at least one claim that was facially false.¹⁹ To combat this problem, we decided to enlist the media as an ally in our campaign. In 2003, we published a guide that describes seven claims in weight loss ads that should raise red flags because they are always false.²⁰ We asked the media to refuse to run advertisements that make the “Red Flag” claims. Then-Chairman Muris and Commissioner Leary met with members of the media and asked that they “do the right thing.”²¹

I am pleased to announce that many apparently have done so. Today, we are issuing a report based on data gathered in 2004, which appear to show that the media has responded to our challenge.²² We repeated our survey of weight loss advertisements and, a year after first asking the media for help, we found that the number of ads with Red Flag claims had fallen from almost 50 to 15 percent. Fifteen percent is still too high, but the progress is remarkable. For some of the worst claims – like the promise of substantial weight loss without diet or exercise – the results are even better, down from a whopping 43 percent to 5 percent of weight loss product ads. Continued effort is necessary. Nonetheless, these figures suggest substantial progress, and I

¹⁹FTC, RED FLAG, BOGUS WEIGHT LOSS CLAIMS (2003), *available at* <http://www.ftc.gov/bcp/online/edcams/redflag/falseclaims.html>.

²⁰FTC, DECEPTION IN WEIGHT-LOSS ADVERTISING WORKSHELF OPPORTUNITIES AND BUILDING PARTNERSHIPS TO STOP WEIGHT-LOSS FRAUD ii (2003), *available at* <http://www.ftc.gov/os/2003/12/031209weightlossrpt.pdf>.

²¹FTC Chairman Timothy J. Muris, Do the Right Thing, Remarks Before the Cable Television

commend those members of the media that have made conscientious efforts to screen out these blatantly deceptive ads.

V. Food Marketing To Children

Of course, the problem of obesity is not limited to adult consumers. In fact, health experts find the doubling of the percentage of our children who are obese to be even more alarming.²³ There are many possible causes: eating too many snacks; watching too much television, playing too many video games, and sitting for hours in front of the computer; not getting enough exercise; eating large servings at favorite restaurants; among others. In seeking to address this serious problem, many are fixing the spotlight on the marketing of food to children and are calling for legislative and regulatory limitations. Others argue that such restrictions would contribute little to the solution, positing that food advertising does little more than shift the brand of popular drinks, snack foods, or cereals that children will eat anyway. Others debate the role of parental responsibility for their children's health.

I doubt that we will ever fully resolve the debate to all parties' satisfaction. But we do not need to. It is far m

Collectively, these individual actions are spurring changes in the way foods are marketed to children.

In an effort to focus the ongoing debate, the Federal Trade Commission, together with the Department of Health and Human Services, will hold a two-day workshop this summer in Washington. This will provide a forum for addressing concerns regarding the marketing of food and beverages to children and will include a discussion of industry self-regulation efforts, such as CARU.

We do not view this as the first step toward new government regulations to ban or restrict food advertising and marketing to children. The FTC tried that approach in the 1970s, and it failed for good reasons. But, it is an opportunity to examine what is and is not working and to explore what more can be done through responsible marketing, product innovations, and other approaches to promote healthy food choices and lifestyles for our children.

VII. Conclusion

Fashioning effective industry self-regulation is a challenging endeavor that requires creativity, commitment, and persistence. Experience suggests that self-regulatory organizations that work best often have the following elements: clear requirements; widespread industry participation; active monitoring; effective enforcement mechanisms; procedures to resolve conflicts; a transparent process; responsiveness to a changing market and to consumers; sufficient independence from direct control by industry; and a procompetitive approach.

The BBB is a fine example of a well-functioning, self-regulatory agency, and I appreciate its efforts on behalf of American consumers. Staying ahead of new threats to consumers and the

marketplace calls for the best efforts of government, industry, and consumer organizations, both individually and cooperatively. I look forward to continuing our work together. Thank you.