



# The Federal Trade Commission

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**REMARKS OF CHAIRMAN DEBORAH PLATT MAJORAS<sup>1</sup>  
OBESITY LIABILITY CONFERENCE  
CHICAGO, IL  
MAY 11, 2005**

**"The FTC: Fostering Positive Market Initiatives to Combat Obesity"**

## **I. INTRODUCTION**

Thank you. I am delighted to be here today so that I can share with you my vision of what the FTC can do to foster positive market responses to the obesity problem. The subject of obesity, especially among our children, pervades the news media and has become daily fodder for sitcoms and late night comedians. Just last week, Bart Simpson was sent off to “fat camp” after gorging on junk food from school vending machines. On *The Tonight Show*, Jay Leno introduced a new version of the wall chart that parents use to proudly record their child’s growth – this one included a horizontal scale to measure a child’s growing girth along with height. While we can laugh at these skits, we all recognize the gravity of the problem, especially as it relates to the health of our children.

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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 of any other individual Commissioner.

The statistics on obesity are now well-known. The latest data from the National Center for Health Statistics estimates that over 60 million adults in the U.S. are obese, and the numbers for children are even more sobering – 9 million young people between ages 6 and 19, with the percentage of overweight children tripling since 1980.<sup>2</sup> Keeping up with the many, evolving sources of data about obesity can be difficult, but whatever the latest numbers, obesity has clearly become a top consumer health issue.

Along with the media coverage has come much finger pointing. Some blame technology

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<sup>2</sup> “Overweight and Obesity: Home,” Division of Nutrition and Physical Activity, Centers for Disease Control and Prevention, (April 29, 2005)  
<http://www.cdc.gov/nccdphp/dnpa/obesity>.

## **II. THE FTC'S RESPONSE TO THE OBESITY EPIDEMIC**

In dealing with any consumer issue of such scope and significance, the FTC uses every channel and means available within the agency and also looks outside for help from potential partners in government, industry, and consumer groups. First, we engage in law enforcement, focusing our resources on unfair, deceptive, or fraudulent practices that cause significant consumer injury. Second, we conduct consumer and business education. As the old saying goes, an ounce of prevention is worth a pound of cure, so effective consumer and business education is particularly efficient for a small agency with a large mission like the FTC. Third, we engage in research and advocacy work to help inform us and our sister agencies in our pursuit of policies that will foster a marketplace that is both vigorous and responsive to consumer needs.

I will touch briefly on each.

### **A. Aggressive Law Enforcement Against Bogus Weight Loss Scams**

With an estimated 70 million Americans trying to lose weight,<sup>3</sup> it is not surprising that weight loss is big business (pardon the pun). Unfortunately, too many of the weight loss products advertised to consumers are more likely to reduce the bulk in consumers' wallets than on their waistlines. Products like "Fat Trapper" and "Exercise in a Bottle" promise fast and easy weight loss with claims that you can "eat what you want and never – ever – ever have to diet

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<sup>3</sup> See "Overweight and Obesity: At a Glance," available at [http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact\\_glance.htm](http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_glance.htm).

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<sup>4</sup> These and other claims made in an infomercial for two dietary supplement products were challenged by the Commission as false and misleading. *See FTC v. Enforma Natural Prods., Inc.*, Civ. Action No. 04376JSL (CWx)(C.D. Cal. 2000)(stipulated final order).

<sup>5</sup> In the Commission's pending case against this marketer of the "Himalayan Diet Breakthrough" the court granted a preliminary injunction and asset freeze. *FTC v. AVS Marketing, Inc. et al.*, Civ. Action No. 04C-6915 (N.D. Ill. Nov. 19, 2004)(stipulated order).

<sup>6</sup> FTC, RED FLAG, BOGUS WEIGHT LOSS CLAIMS



### **C. Consumer Education**

We can also bolster our enforcement efforts by arming our consumers with the tools to spot and avoid ineffective weight loss products. The more educated the consumer, the harder it is for scam artists to make a profit. Our consumer education budget is relatively small, but the ingenuity and talent of our staff are huge. Among our many innovative consumer education techniques have been our teaser sites. Consumers shopping on the Internet for weight loss products may find themselves on a website pitching the fictitious “Fat Foe Eggplant Extract,” which promises that you can “kiss your dieting days goodbye” and “feast on your favorite foods” while still losing up to 10 pounds per week. The Fat Foe teaser site was constructed by FTC staff using the same enticing testimonials, before-and-after photos, and “experts” in white lab coats used by weight loss scam artists. But, when consumers click through to order Fat Foe, they are warned that they could have been scammed and are directed to FTC consumer fact sheets for more reliable information.<sup>10</sup> Our Fat Foe site generated a lot of media attention, but more importantly, it got the attention of consumers. The site has registered more than 100,000 hits to date and hopefully has taught some shoppers to be more cautious.

### **D. Advocacy to the FDA for Better Nutritional Labeling**

The Commission has long been an advocate of government policies that promote truthful diet and health information in the marketplace. In short, we have advocated policies that

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<sup>10</sup> The teaser site for Fat Foe is posted on the Web in both English and Spanish at <http://www.wemarket4u.net/fatfoe/index.html> and <http://www.wemarket4u.net/fatfoe/espanol/index.html>. The FTC consumer fact sheet, “Weighing the Evidence in Diet Ads,” is linked to the Fat Foe teaser site and is also available on the FTC’s web site at <http://www.ftc.gov/bcp/online/pubs/health/evidence.pdf>.

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<sup>11</sup> *See* FDA, CONSUMER HEALTH INFORMATION FOR BETTER NUTRITION

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<sup>14</sup> The Commission's quick intervention in this matter was able to stop the "Skinny Pill for Kids" product before it ever reached the market. *FTC v. The Fountain of Youth Group, LLC et al.*, Civ. Action No. 04CV47J99HTS (M.D. Fl. 2004)(stipulated final order).



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<sup>15</sup> *Preventing Childhood Obesity: Health in the Balance*, Committee on Prevention of Obesity in Children and Youth, Food and Nutrition Board, Institute of Medicine (2004).

With respect to certain advertising practices, self-regulation has been the best regulatory mechanism. Any form of government limitation on truthful commercial speech faces significant constitutional hurdles. Thus, in addition to significant practical and policy reasons weighing against government restrictions, any proposal for government regulations broadly restricting food advertising to children would have to pass muster under the First Amendment.<sup>16</sup> Under that test, the government would first have to convince the courts that advertising negatively affects children's health, or at least that restricting food advertising to children would directly advance their health.<sup>17</sup> Establishing evidence of such a cause and effect is, at best, a difficult undertaking. The second hurdle would be even greater. The government would need to show that there are no options to protect children's health that would not involve limiting speech.<sup>18</sup> Because commercial speech, including advertising, is a valuable source of information to consumers, the Supreme Court clearly disfavors approaches that restrict speech.<sup>19</sup> In addressing childhood obesity, the government would first have to consider whether other approaches, such as increasing nutrition education in schools, would be viable. As the Court clearly stated in a case in which it rejected FDA regulations restricting certain advertising claims, "If the First Amendment means anything,

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<sup>16</sup> See *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980)(articulating a four-part test for evaluating whether government restrictions on commercial speech are constitutional under the First Amendment).

<sup>17</sup> *Id.* at 566.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 490-91 (1995)(stating that if government can achieve its interests in a manner that does not restrict speech, or that restricts speech less, it must do so); see also *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507 (1996).

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<sup>20</sup> *Thompson v. Western States Med. Ctr.*, 535 U.S. 357, 373 (2002).

<sup>21</sup> Ratings are assigned by the Classification and Rating Administration, which is affiliated with the MPAA. MOTION

would be unwieldy. The result is an approach that is at once more effective and less burdensome. And often the rules or guidelines developed will represent a broad cross-section of industry views, because participants will not want to risk significant refusals to participate, which would undermine the entire scheme.

Self-regulatory dispute resolution may also be less adversarial and more efficient than more formal legal or regulatory procedures for disputes both among industry members and between consumers and industry. And if the process is sufficiently objective and transparent, it permits the public to judge the integrity of the review system and increases confidence in self-regulation.

For all of these reasons, I am hopeful that industry-initiated action to respond to concerns about advertising and marketing of food to children is a promising avenue. Your own efforts, not government-imposed mandates, are more likely to achieve responsible marketing to encourage better nutrition and health choices for our children.

## **B. Goals of the Workshop**

Even if you are convinced that food marketing has played no role in childhood obesity, you should still be able to agree that advertising can be part of a solution. Advertising and marketing of healthier foods to both kids and parents can be part of the effort to address the problem of overweight and poor nutrition among our nation's children.

Who here isn't familiar with the ad campaign featuring Smokey Bear admonishing "Only YOU can prevent forest fires?" Since its inception in 1944, that campaign has been credited with

reducing the number of acres lost annually from 22 million to 4 million.<sup>23</sup> As far as I know, no one had accused the advertising industry of contributing to the problem of forest fires, but advertising helped combat it. The advertising community can do the same here.

As the IOM report recognized, “there is great potential for the media and ent ad6il/TT2 j-29.415 -2.33 TD

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<sup>23</sup> *Forest Fire Prevention – Smokey Bear (1944-Present)*, The Ad Council, available at [http://www.adcouncil.org/campaigns/historic\\_forest\\_fire\\_prevention](http://www.adcouncil.org/campaigns/historic_forest_fire_prevention).

<sup>24</sup> *Preventing Childhood Obesity: Health in the Balance*, Committee on Prevention of Obesity in Children and Youth, Food and Nutrition Board, Institute of Medicine (2004), Exec. Summary at 9.

Today, the Commission and HHS are releasing the text of a Federal Register Notice that describes our workshop in more detail and outlines the issues we plan to explore.<sup>25</sup> The Notice seeks written comment on a number of topics and questions from any and all interested parties and invites requests for panelists to participate in the workshop. Comments and requests to participate are due by June 9<sup>th</sup>.

Painting a broad brush, we plan to examine six areas. First, the workshop will provide an opportunity to briefly explore some of the literature on the connection, if any, between the marketing of food and beverages to children and childhood obesity. The workshop will also highlight some of the many other factors that health experts say may contribute to this problem. Marketing of foods to children is only a part of that puzzle, but nonetheless a highly visible one. I will warn you that any discussion of the research likely will be neither comprehensive nor dispositive. There is much that the research can tell us and much that it cannot. It may never be possible to resolve inconsistent findings or reach any irrefutable conclusions about why our children are getting heavier. Still, we think it will be useful to review what is out there.

Second, we will review and try to define the full scope of food and beverage marketing to kids. Traditional forms of marketing – like television advertising – are only part of that picture. We want to make sure that we look at all of the channels and techniques used by food and beverage companies to reach children, either directly or indirectly through their parents. We know that children are spending more time on the Internet, for instance, and that “advergaming”

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<sup>25</sup> Public Workshop: Marketing, Self-Regulation, & Childhood Obesity, 70 Fed. Reg. 25060 (May 12, 2005). Additional information about the workshop is posted on the FTC’s web site at <http://www.ftc.gov/bcp/workshops/foodmarketingtokids/index.htm>.

has become a new technique to reach children. We do not want to forget about the substantial investments that marketers make to reach children through product packaging and in-store promotions. We also need to include marketing that occurs in particular venues, like schools, and the use of specific techniques like licensing of popular children's programming and movie characters. We need a solid understanding of the entire universe that constitutes marketing to children before we can evaluate how effective any self-regulatory proposal or other initiative is likely to be.

A third area of inquiry will be an examination of existing industry efforts to promote responsible marketing of food and beverages to children through self-regulatory programs. We will, of course, look at industry-wide guidelines like those enforced by the Better Business Bureau's Children's Advertising Review Unit, or CARU.<sup>26</sup> CARU has long played a role on all advertising issues related to children, and I know that they are actively reviewing their guides to keep up with the evolution of advertising. I am hopeful that, by bringing together a wide range of stakeholders, we may be able to identify ways to help CARU and others establish even more effective programs. As part of our discussion of industry-wide self-regulation, we expect to hear about the pros and cons of alternative approaches that have been suggested by advocacy groups like the Center for Science in the Public Interest or that are already in use in other countries.

Fourth, we will also be looking at the efforts of individual companies to promote healthier food choices for children, both in the food and beverage industry and in the media and

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<sup>26</sup> CARU's guides include basic principles for responsible advertising directed to children under 12, as well as principles that relate to specific advertising techniques. A number of these principles directly apply to how foods and beverages are marketed to children. *See Self-Regulatory Guidelines for Children's Advertising*, Children's Advertising Review Unit, Council of Better Business Bureaus, Inc., available at <http://www.caru.org>.

entertainment industry. There are many examples of innovative approaches to the obesity challenge. Some companies have built in nutritional messages in product promotions. Others have changed the nutritional profile of products, or the overall mix of their product line. Others have repackaged or resized products to discourage overeating, or have limited the products expressly targeted to younger children. We also expect to hear from media companies about marketing standards they have developed. There is much to be gained by gathering these companies together to share their experiences, whether successful or not.

Fifth, we will look at the role of positive nutritional messages. As the Commission has learned in so many areas, consumer education is a vital part of the solution to any consumer protection challenge. So we will want to hear about the effectiveness of efforts by industry members, media companies, government, public advocacy groups, and others to educate children and their parents about healthier foods and the importance of good nutrition and a healthy lifestyle.

And finally, we want to leave the workshop with some sense of how we can build on, enhance, and replicate existing programs and initiatives to promote responsible food and beverage marketing to children and to promote healthier food choices. I hope that we will be able to identify some concrete steps that industry, government, and public policy groups can take together to make progress against childhood obesity. I do not expect that we will have all the answers or even know all the questions that need to be answered. But if we all come to the table prepared to examine carefully and constructively what can be done, then the two days will be productive.





public health groups is not good business. If industry fails to take positive steps, others may try to step in and act for them. Some have already called on government to regulate rather than facilitate. Their voices may grow if industry does not demonstrate a good faith commitment to this issue.

In closing, I would like to emphasize the potential for advertising to be a positive force in this area. I am sure that no one in this room doubts the power of advertising to shape consumer demand and choices. Similarly, the FTC is a big believer in advertising as a promoter of competition in our free market society. That is why I am so hopeful that the food marketing and advertising industries will take advantage of the FTC/HHS workshop. I hope you will join us at the workshop.

Thank you.