

Chairmen, Ranking Members and Members of the Committee and Subcommittees, I am
David C. Vladek, Director of the Bureau of Consumer Protection of the Federal Trade
Commission (FTC or Commission). The Commission is pleased to have this opportunity to discuss

¹ This written statement presents 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 Agency 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 in 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.

Introduction

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

⁴ Institute of Medicine, *Food Marketing to Children and Youth: Threat or Opportunity?* (The National Academies Press 2006) 307-308. The OM also found strong evidence that exposure to television advertising associated with adiposity in both children under 2 and teens 12-18 years. The OM noted that “even a small influence aggregated over the entire population of American children and youth, would be consequential in impact.” *Id.* at 308.

industries spent more than \$1.6 billion dollars to market 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 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 CBB, 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 pleading to 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

FTC Public Forum, *Sizing Up: Food Marketing*

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 their 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 FDA 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.

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.