

CLIENT ADVISORY

FTC EXAMINES MARKETING FOOD TO CHILDREN AND ADOLESCENTS

INTRODUCTION

On July 29, 2008, the Federal Trade Commission (FTC) released its report, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation*.¹ Prompted by concern about the increase in childhood obesity in the United States, Congress asked the FTC to conduct a study of food and beverage industry marketing to children and adolescents under the age of seventeen. Although the report did not specifically address whether there is a link between food marketing to children and childhood obesity, the FTC found that obesity is a complex problem with many contributing factors, and that food and beverage marketers have the ability to help play a positive role in reversing the obesity trend. The FTC applauded current industry self-regulation efforts to combat childhood obesity, but provides several future recommendations for food and beverage companies, as well as media and entertainment companies, to follow.

The report thus suggests that the FTC is going to continue to pressure food and beverage companies to modify their marketing practices to children. Notably, however, the FTC did not suggest that any of the companies were involved in conduct that violated Section 5 of the FTC Act, presumably because of the protections afforded to certain commercial speech by the First Amendment. The report, however, is the latest in a series of efforts by Congress and the FTC to pressure various industries to modify their marketing practices through the use of the FTC's investigatory authority and publicity in situations where the legal basis for a challenge to the targeted practices under Section 5 is shaky at best.

REPORT FINDINGS

The report studied 44 food and beverage companies that market to children and adolescents and found that in 2006, those companies spent \$US1.6 billion to promote their products to children and adolescents in the United States. Instead of just focusing on traditional media, such as television, the report analyzed previously unmeasured forms of marketing, such as cross-promotion, in-store advertising, sweepstakes, packaging, and use of the Internet.

The marketing data in the report were obtained through compulsory process orders issued to the 44 companies, which are all leading advertisers to children

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¹ <http://www.ftc.gov/os/2008/07/P064504foodmktngreport.pdf>

and adolescents in the industry, including beverage manufacturers and bottlers; packaged food producers; makers of candy and frozen desserts; dairy companies; fruit and vegetable growers; and fast-food restaurants. The approximately \$US1.6 billion spent by the reporting companies to promote food and beverage brands to children and adolescents in 2006 accounted for 17% of the total combined marketing budget for these brands directed to all audiences. Traditional media, including television, radio, and print, was still the most popular form of marketing, accounting for 53% of the reported youth-directed marketing expenditures. However, the report noted that cross-promotion, which integrates traditional media with new media, such as the Internet, text messaging, and viral marketing, has become an important way to reach children and adolescents. Cross-promotions often are fully integrated—themes featured in television ads carry over to promotional displays in stores or restaurants, as well as packaging for cereals, snacks, and carbonated drinks. Cross-promotions accounted for 13% of all reported youth marketing. More than two-thirds of the reporting companies use online youth-directed marketing, including offering “advergaming” and downloadable content such as coloring pages or free ringtones.

PAST INITIATIVES

The report discussed two self-regulatory initiatives inspired by the Workshop on Marketing, Self-Regulation & Childhood Obesity sponsored by the FTC and the US Department of Health and Human Services in 2005. First, the Children’s Food and Beverage Advertising Initiative, established by the Council of Better Business Bureaus (CBBB) in 2006, joined 13 of the largest food and beverage companies in the fight against obesity. The participating companies pledged to devote 50% of traditional media advertising directed to children under 12 to promote healthy dietary choices and an active lifestyle. Second, working with the Alliance for a Healthier Generation,² several food and beverages

companies committed to improve the nutritional profile of food and beverage products sold in schools outside of school meal programs, as well as products provided for use in school food service programs. The participating companies created voluntary nutritional guidelines for foods and drinks. The guidelines include changes in package sizes, nutritional content, advertising, as well as limiting the types of food in schools to healthier choices.

FTC RECOMMENDATIONS

FTC Commissioner, Jon Leibowitz noted, in his separate concurring statement, that “most large food marketers are beginning to take their self-regulatory obligations seriously, and for that they deserve recognition. Yet some companies still need to step up to the plate and others need to strengthen their voluntary measures, not only because it is in the public interest, but also because it is in their self-interest: a failure of self-regulation may make the next Congress—and next administration—more inclined towards government regulation.”³ Based on the report, the FTC recommends that the food and beverage industry, as well as the media and entertainment industry, take the following actions:

Products – Increase efforts to improve the nutritional profiles of products through innovation and reformulation, to make the products lower in calories, more nutritious, and more appealing to children.

Labeling – Conduct research on the effectiveness of various labeling devices and identify those devices most effective at conveying meaningful, truthful information. Create consistency among the standards used by individual companies in determining what constitutes a “better for you” product, including whether the fact that a product has “less” of or is “reduced” in calories or fat is, by itself, a sufficient basis for qualifying as a “better for you” product.

Consumer Education – Expand public outreach efforts to educate children and adolescents about the importance of healthy eating, exercise, and active lifestyles, with particular attention to outreach aimed at ethnic minority populations that are disproportionately affected by childhood obesity.

² The Alliance is a partnership of the American Heart Association and the William J. Clinton Foundation. Its goal is to stop the increase in the prevalence of childhood obesity by 2010, and reverse the trend by 2015. See <http://www.healthiergeneration.org/about.aspx>.

³ <http://www.ftc.gov/speeches/leibowitz.shtm>

The CBBB Initiative – The FTC recommends that all food and beverage companies should join the CBBB initiative, and the CBBB should closely monitor participating companies' compliance with their pledges. Participating companies should ensure that franchisees are bound by the pledge by incorporating pledge commitments into franchisee contracts. The CBBB initiative should be further strengthened using the findings of 2008 report, including recommendations to (1) expand the scope of "advertising to children" to include not just traditional media, but all advertising and promotional techniques, such as cross-promotion, in-store advertising, sweepstakes, packaging, and the Internet; (2) require that 100% of food advertising directed to children under 12 promote healthy dietary choices; (3) standardize the nutrition criteria for "healthy dietary choices" that may be marketed to children; (4) work toward developing meaningful standardized definitions for what constitutes advertising "directed to children under 12"; and (5) require that participating companies not engage in product placement in media directed to those under age 12.

Media and Entertainment Companies – Limit licensing of characters to healthier foods and beverages that are marketed to children so that cross-promotions with movie and television characters will promote more nutritious food and drink. Media and entertainment companies should work with the CBBB to create their own self-regulatory programs and create public education campaigns directed to the problem of childhood obesity.

Marketing in Schools – Continue efforts to improve the nutritional profile of foods and beverages sold in schools. Join the Alliance for a Healthier Generation or adopt and adhere to meaningful nutrition-based standards for foods and beverages sold in schools. Cease all in-school promotion of products that do not meet meaningful nutrition standards.

The FTC will continue monitoring industry self-regulation for implementation of its recommendations and the need for additional measures. As noted in the Introduction, the FTC did not suggest that any current marketing practices by the reporting companies violated Section 5. However, as

Commissioner Leibowitz stated in his concurring statement, the failure of self-regulatory efforts to adhere to the FTC's recommendations may prompt additional pressure from the FTC or legislation from Congress regulating the industry's practices.

We hope that you find this brief summary helpful. If you would like more information on the issues raised in this client advisory, please feel free to contact:

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