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FTC and HHS Applaud Industry Efforts but Underscore Importance of Future Progress in Addressing Childhood Obesity

INTRODUCTION

On July 18, 2007, the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) held an open forum—"Weighing In: A Check-Up on Marketing, Self-Regulation, and Childhood Obesity"—that served as a follow-up discussion to the FTC's 2005 workshop and 2006 report on the same topic. The FTC applauded industry and self-regulatory group efforts to combat the recent trend of childhood obesity, but underscored the importance of continued progress. During the next few weeks, the FTC plans to subpoena advertising information from over forty food and beverage companies in order to complete a comprehensive analysis of commercial advertising directed at children and adolescents. Additionally, the FTC will continue to closely monitor self-regulatory efforts and will explore the possibility of recommending uniform nutrition seals and icons on food packaging.

2006 FTC REPORT AND INDUSTRY INITIATIVES

The 2006 FTC report included several recommendations for the food and entertainment industries. The report called upon food companies to: (1) expand product and packaging innovations in order to provide more nutritious options that were appealing to children, (2) revise marketing and sales practices in schools, and (3) consider adopting a uniform label icon for smart food choices. Media and entertainment companies were asked to: (1) incorporate nutrition and fitness messages into programming and (2) limit the licensing of children's television and movie characters to more nutritious products. Both industries were called on to support public service campaigns on nutrition and fitness and develop community outreach programs.

During the forum, representatives from self-regulatory groups and from the food and entertainment industries reported on their progress in implementing initiatives recommended in the 2006 FTC report. Several member companies of the Children's Advertising Review Unit (CARU)¹ were highlighted as industry leaders for their pledges to reduce or eliminate certain advertising aimed at children, as well as for their media and community outreach programs to assist parents in making healthy food and beverage choices. The current members of CARU account for two-thirds of

¹ CARU is the principal industry self-regulatory group that governs advertising directed to children, including food advertising.

all television food advertising to children. At the forum, CARU representatives announced that eight of the eleven largest participants in CARU have agreed to conform 100 percent of their advertising directed at children to nutritional standards, while three companies pledged to stop advertising to children under the age of twelve completely.

Lydia B. Parnes, Director of the Bureau of Consumer Protection, expressed optimism about CARU's new authority to take action against companies who engage in unfair advertising directed towards children, but stressed that the FTC would continue to monitor the level of compliance and the sufficiency of penalties assessed by the self-regulatory group. The FTC also recognized CARU's new children's food and beverage initiative to change the mix of television, radio, Internet, and print advertising and reduce the number of licensed television characters used to market foods with high sugar, fat, and sodium contents. Parnes warned, however, that the FTC expects companies that are not involved in the self-regulatory effort to join such initiatives "sooner rather than later," and expressed dissatisfaction with the one-third of food advertisers that had not joined the CARU coalition or other similar programs.

FTC CHILDREN'S TELEVISION ADVERTISING STUDY

The FTC also discussed its findings from a recent study of children's television advertising between 1977 and 2004.² Based on its study, the FTC concluded that children saw fewer television ads

in 2004 than in 1977, but were still viewing a significant number of ads through different media forms such as advergames, child-oriented websites, product placements, and other tie-ins with movies and television programming. Although the FTC recognized that marketing and advertising are not the sole causes of childhood obesity, Commissioner Liebowitz expressed his belief that "advertising especially designed for children is more likely to influence their product preferences, purchase requests, and eating habits." Additionally, Commissioner Liebowitz alluded to a potential junk food advertising ban or other regulatory solutions that have been suggested by members of Congress if companies do not continue to curtail marketing efforts to children for such products.

FTC NEXT STEPS

The FTC announced that it would be serving compulsory process orders on forty-four food and beverage companies that market to children and adolescents. This FTC action is in response to a Congressional request for a comprehensive analysis of the types and amounts of food marketing directed at children and adolescents. The report will include a study of: (1) commercial advertising time on television, radio, and in print media, (2) in-store marketing, (3) direct payments for preferential shelf placement, (4) promotional events and special packaging, (5) all Internet

activities, and (6) product placements in television shows, movies, and video games. The information gathered from these companies will measure the success of current industry initiatives and help the FTC establish future objectives. The FTC also stated that it would partner with the Keystone Center, a nonprofit public policy organization, in order to explore uniform nutritional standards and food packaging seals for foods marketed to children. The FTC stressed that even though "it may be debatable that advertising and marketing are part of the obesity problem, there is no question that they have to be part of the solution." The FTC promised to closely monitor industry self-regulation efforts and ensure that such voluntary programs are timely and effective in preventing childhood obesity.

We hope that you find this brief summary helpful. If you would like more information, please feel free to contact your Arnold & Porter attorney or:

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² FTC Bureau of Economics Staff Report, *Children's Exposure to Television Advertising in 1977 and 2004: Information for the Obesity Debate* (June 2007).