

Strategies to Improve the Media Environment: The Case of Food Marketing to Children and Adolescents



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Disclaimer

The views expressed herein are my own personal views and are not necessarily the views of the Federal Trade Commission or any individual Commissioner.

What is the FTC?

- Small, independent agency of 1,100 employees -- lawyers and economists
- Annual budget of a little over \$200 million
- Both consumer protection (*e.g.*, false advertising) and competition (*e.g.*, monopolization, price-fixing) jurisdiction in most economic sectors

FTC Tools

1. Law enforcement: deceptive or unfair ads
2. Policy and research development through hearings, workshops, and conferences
3. Educational programs for consumers and businesses

Childhood Overweight/Obesity

- The Problem:
- 17% of 2-19- year-olds are overweight – nearly 13 million kids
- % of overweight children 6-11 has increased almost ***fivefold*** since the early 1970s
- numbers are even higher for African-Americans and Hispanics

Childhood Overweight/Obesity

- The Potential Causes:
- less physical activity at home and school
- changes in family eating patterns
- competitive foods and beverages in schools
- popular culture encourages overconsumption
- food marketing: TV, print, Internet, packaging, promotions, social networking

The Case of Food Marketing to Children: TV Advertising

- FTC Study of 2004 Nielsen TV Data:
 - kids 2-11 see 25,000+ TV ads (5,500+ for food, a slight decline from 1977)
 - most foods are of low nutritional value: fast food, highly sugared cereals, sweets, snacks, sweetened drinks
 - 50% of food ads on children's shows – mostly on cable TV
 - kids see twice as many ads for sedentary activities – toys, video games, DVDs, TV shows

The Case of Food Marketing to Children: Premiums, Packaging, and Promotions



The Case of Food Marketing to Children: Online Social Networking

- Kid social-networking worlds like Habbo Hotels and NeoPets feature billboards or sponsored “rooms” (Sprite’s “Club Thirst”) or “zones” (McDonald’s, Disney)



The Case of Food Marketing to Children: Advergames

- Online game features product/brand
- 73% of food marketers to children have advergames (Kaiser 2006)
- (CBBB's Children's Food & Beverage Ad. Initiative): by end of 2008, only “better for you products” or healthy lifestyle messages



The Case of Food Marketing to Children: In-Game Advertising

- Massive, Inc. serves up ads real-time to several million online gamers (e.g., static and dynamic billboards)



FTC Options for the Media Environment: Law Enforcement

Federal Trade Commission Act:

- Unfair or deceptive acts or practices prohibited (15 U.S.C. § 45(a))
- False advertisements for foods, drugs, devices, and services prohibited (15 U.S.C. § 52)

FTC Options for the Media Environment: Law Enforcement

Deceptive: a representation, omission, or practice is *deceptive* if:

- (1) it is likely to mislead consumers acting reasonably under the circumstances; and
- (2) it is material; that is, likely to affect consumers' conduct or decisions with respect to the product at issue.

FTC Options for the Media Environment: Law Enforcement

Unfair: a practice is unfair if the injury to consumers it causes or is likely to cause is:

- (1) substantial;
- (2) not outweighed by countervailing benefits to consumers or to competition; and
- (3) not reasonably avoidable by consumers themselves.

FTC Options for the Media Environment: Law Enforcement

- FTC has prosecuted deceptive food ads
 - *e.g.*, Wonder Bread case (good source of calcium improves kids' memory and mind function)
 - FTC has brought 100+ cases for deceptive weight loss products/programs
 - FTC enlisted media co's to screen ads for "Red Flag" claims – *e.g.*, "lose 2 lbs or more per week without diet or exercise"

FTC Options for the Media Environment: Law Enforcement

- FTC has experimented with rulemaking
 - 1980: Congress bans “kidvid” child ad rulemaking premised on “unfairness” theory
 - FTC had proposed ban on ads for sugary foods to kids <13 or all TV ads to kids <9 (later changed to <7)
 - difficult to develop practical & effective ad restrictions – e.g., a ban on junk food ads on children’s shows covers only 50% of exposure
 - 1st amendment: food ads = commercial speech
 - gov. must show ad restrictions are narrowly tailored and would materially alleviate childhood overweight/obesity
 - restrictions would severely impact adult audience

Private Legal Options

- Private lawsuits

- CCFC, CSPI sued Kellogg's to adopt nutritional standards for marketing
- also sued Viacom b/c of candy, snack ads on Nick Jr and character tie-ins with fast food companies
- CSPI threatened litigation against beverage co's and bottlers for sugary drinks in schools
- CSPI lawsuit against Burger King for trans fats

Self-Regulatory Option

- **1974:**

- CBBB/NARC creates CARU, focused on advertising to children <12
 - monitors ads for deceptiveness
 - issues guidelines for food ads based on children's limited capacity to assess credibility – e.g., ads must show reasonable amount of product & role in balanced diet, snack foods ≠ a meal

Self-Regulatory Option

2004: IOM Report

- notes gaps in publicly available food marketing research regarding children
- estimates industry spent \$10-12 billion on full spectrum of food marketing in 2002
- encourages HHS conference on self-regulation

Self-Regulatory Option

- **2005-06:**

- HHS/FTC workshop/report on marketing, self-regulation, & childhood obesity → recommendations
- CARU modifies food ad guidelines (2006)
 - now cover unfairness, advergames, viral and buzz marketing
- School nutrition (2006)
 - Alliance for a Healthier Generation and food/beverage co's agree to nutritional guidelines for drinks and competitive foods

Self-Regulatory Option

- **2007: CBBB's Children's Food & Bev. Ad. Initiative**
 - 11 co's account for $\frac{2}{3}$ of TV food ads directed at kids
 - **Measured Media Advertising**
 - 3 co's pledged no ads to kids under 12
 - 8 co's adopted minimum nutritional standards for marketing food to children under 12; *all* foods are "better for you"
 - **Third Party Licensed Characters**
 - Limited to better-for-you products or healthy lifestyle messages in advertising primarily directed to children under 12
 - **Product Placement**
 - Will not be sought out or paid for in child-directed media
 - **Elementary Schools**
 - No advertising of food & beverages to children

Media Company Initiatives

- **Disney and Sesame Workshop:** will use licensed characters only for more nutritious, lower-calorie products – *e.g.*, *Ratatouille* with bottled water and fruit, Elmo cut green beans
- **Nickelodeon:** SpongeBob and Dora on Green Giant veggies (*but* SpongeBob also on Pop Tarts, E.L. Fudge Cookies, and tied in with Burger King). *However*, in 2009, limited to “better for you”
- **Discovery Kids, Cartoon Network:** licensed characters on food packaging and promotional tie-ins must meet nutritional standards on fat, calories, sugar

Healthy Message Initiatives

- **Ad Council/HHS:**
 - Small Steps, Be A Player
- **CDC:**
 - VERB (paid ads promoting physical activity “brand” to tweens; ethnic-specific)
- **Disney Channel:**
 - program sponsors must meet food guidelines; healthy messages in programs
- **Nickelodeon:**
 - Let’s Just Play campaign (TV spots on healthy lifestyle, grants to organizations that encourage play)
- **Discovery Network:**
 - Hi-5, Hip Hop Harry, and Endurance shows teach kids the importance of being active.
- **BET Foundation:**
 - girls summer camp, Healthy Eating-Active Lifestyle after-school program

FTC Options for the Media Environment: Monitoring Self-Regulation

- **FTC Food Marketing Study (ongoing)**
 - will address info gaps cited in IOM Report
 - compulsory process orders to 44 food and beverage companies that market food to children and adolescents
 - will establish baseline of marketing practices by which to measure industry initiatives
 - data on measured media, such as television and print advertising
 - data on unmeasured media, such as in-store marketing, character licensing, viral marketing, and product placements
- **FTC will issue report on methods and expenditures**
- **FTC will make further recommendations**

Going Forward

- More food product innovation
- More healthy eating/lifestyle (but not mixed) messages
- More and better self-regulation:
 - causal role of advertising unclear, but part of solution
 - avoids constitutional difficulties, can be more efficient
 - nutritional standards stringent enough?
 - ad placement standards stringent enough?
 - must be penalties for non-compliance with co. pledges
- FTC food marketing study will gauge online activities and expenditures to reach kids, a baseline for self-regulation
- If necessary, FTC will target deceptive food ads regarding nutritional or functional benefits