

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of)	
Interagency Working Group On Food)	
Marketed To Children:)	
General Comments, Nutrition)	FTC Project No. P094513
Principles and Proposed Marketing)	
Definitions)	

This filing is the Campaign for a Commercial-Free Childhood’s (CCFC) response to the Interagency Working Group on Food Marketed to Children’s (IWG) request for comment on its Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts.¹

Given the constraints of the IWG’s charge from Congress—to develop voluntary nutrition standards for food marketed to children—CCFC supports the principles. We commend the IWG and believe the proposed principles will lead to improved self-regulation and we urge the IWG, after strengthening the principles as indicated below, to implement them in a timely manner. We question, however, whether any self-regulation regime can be truly effective. Furthermore, we believe that the most effective way to improve children’s diets and wellbeing is to support parents’ role as gatekeepers by restricting the marketing of all food and beverages to children.

I. NUTRITION PRINCIPLES

CCFC supports the overall proposed nutrition principles. We urge the IWG to strengthen and clarify them by following the recommendations of the Food Marketing Workgroup in its July 14, 2011 letter to the IWG.²

Of particular concern in the current proposal is the unnecessarily long timeframe for implementing the principles. The five-year period for implementation (and ten-year period for final sodium reductions) is actually significantly longer than the implementation period for the food industry’s own self-serving Children’s Food and Beverage Advertising Initiative. Given the clear consensus that the foods currently being

¹ Interagency Working Group on Food Marketed to Children, *Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts: Request for Comments* (2011), available at <http://www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf>.

² Food Marketing Workgroup, *Letter to Interagency Working Group on Food Marketed to Children: Proposed Nutrition Principles, General Comments, and Proposed Marketing Definitions* (July 14, 2011).

marketed to children are contributing to an unhealthy diet, it is imperative that the principles be fully adopted by participating companies within a two-year period.

II. MARKETING PRINCIPLES

CCFC supports the overall marketing definitions as proposed by the IWG. We urge the IWG, however, to strengthen the definitions by following the recommendations of the Food Marketing Workgroup and Children Now.

In particular, we urge the IWG to:

- Distill its marketing definitions, as proposed by Children Now, into two basic benchmarks: “(1) whether the marketing is intended for children and/or teens, or (2) whether the marketing in fact reaches a significant percentage of children and/or teens.”³
- Require brand marketing to meet IWG nutrition principles, as recommended by the Food Marketing Workgroup. Increasingly food marketing is used to promote brands and visits to quick service restaurants rather than a specific product. This marketing should meet the same principles as marketing that promotes specific food products. For example, it makes little sense to exempt from the principles McDonald’s ads that promote Happy Meal toy premiums but do not promote particular Happy Meal combinations or foods, particularly since the default Happy Meal at most McDonald’s locations would not meet the nutrition principles.⁴
- Recognize that the school environment, where students are a captive audience for any commercial messages, is a unique one where children deserve special protections. As such, the IWG should follow the Food Marketing Workgroup’s suggestions for strengthening and expanding the definitions of in-school marketing.
- Include PG movies, as recommended by the Food Marketing Workgroup, in the definitions of product placement and film advertising.

III. GENERAL COMMENTS

The proposed principles represent a significant improvement over the Children’s Food and Beverage Advertising Initiative. Most notably, the CFBAI allows companies to craft their own nutrition principles and marketing definitions. Not surprisingly, many companies have adopted self-serving standards. The proposed principles will replace this hodgepodge based on existing product formulations with a uniform set of standards based on children’s nutritional needs. In addition, unlike the CFBAI, the principles are designed to also protect adolescents ages 12-17, who while more cognitively mature than younger children, are still extremely vulnerable to advertising—particularly the newer

³ Children Now, *In the Matter of Interagency Working Group On Food Marketed To Children: General Comments and Proposed Marketing Definitions* (July 14, 2011).

⁴ Center for Science in the Public Interest (CSPI). *Default Options with Happy Meals*. Washington, D.C.: CSPI, 2008.

and more exploitative digital techniques increasingly favored by food marketers. Finally, the IWG's marketing definitions, which rely on criteria developed by the FTC, are more comprehensive and, if followed, will more adequately protect children from marketing for unhealthy food.

Unfortunately, the proposed principles also share many of the weaknesses of the CFBAI or any self-regulatory approach. Most strikingly, the IWG's proposal is completely voluntary and lacks any type of enforcement mechanism. Other than public pressure, there is no incentive for companies to agree to the principles, and for those that do, there is no reason to comply. Indeed, for companies that rely on the marketing of unhealthy food to children to generate revenue, there is a considerable incentive to disregard the principles since compliance will put them at a competitive disadvantage.

Recent history provides little hope that a voluntary, self-regulatory approach will significantly improve children's diets. In 2009, a study by Children Now found industry self-regulation to be a failure. Even after the CFBAI went into effect, 72.5% of food ads aimed at kids were for products of the poorest nutritional quality. The study also found that licensed characters are increasingly being used to market nutritionally poor food to children.⁵ More recently, researchers at the Rudd Center found that children's exposure to food marketing increased from 2008 to 2010 by 9% (after decreasing 12% between 2004 and 2008). This finding stands in stark contrast to CFBAI-friendly findings from a Grocery Manufacturers Association (GMA) study, which claimed TV food ads targeted at children decreased by 50% between 2004 and 2010.⁶

The reaction of the food industry and advertising industry trade association to the proposed principles also suggests that self-regulation will not work. Considerable resources have been spent to squelch the regulations, including the formation of the Sensible Food Policy Coalition.⁷ Coalition member Viacom, parent company of a leading children's advertiser, has spent nearly one million dollars on lobbying in the first quarter of 2011.⁸ Similarly, cereal maker General Mills spent \$260,000, with a major focus of those dollars on issues related to marketing to children.⁹ Perhaps not so

⁵ Children Now, *The Impact of Industry Self-Regulation on the Nutritional Quality of Foods Advertised on Television to Children* (December, 2009), available at http://www.childrennow.org/uploads/documents/adstudy_2009.pdf.

⁶ Grocery Manufacturers Association, *New Research Shows Dramatic Changes in Food and Beverage Ads Viewed by Children*, (April 28, 2011), available at <http://www.gmaonline.org/news-events/newsroom/new-research-shows-dramatic-changes-in-food-and-beverage-ads-viewed-by-chil/>.

⁷ Layton, L & Eggen, D. *Industries Lobby Against Voluntary Nutrition Guidelines for Food Marketed to Kids*. *Washington Post* (July 9, 2011), available at http://www.washingtonpost.com/politics/industries-lobby-against-voluntary-nutrition-guidelines-for-food-marketed-to-kids/2011/07/08/gIQAZSZu5H_story_1.html.

⁸ *Ibid.*

⁹ *Associated Press*, *General Mills spent \$260K on lobbying* (June 29, 2011), available at <http://www.cnbc.com/id/43580196>.

coincidentally, legislation introduced in the House of Representatives recently would prevent the FTC from moving forward on the principles.¹⁰

Meanwhile, trade groups like the Association of National Advertisers (ANA) have excoriated the principles, often by making misleading and even contradictory claims. On April 28, 2011 the ANA, along with the GMA, issued a press release announcing the results of research allegedly demonstrating that the IWG principles were unnecessary because the food industry had already significantly improved its food marketing under the CFBAI.¹¹ (The actual study has never been released.) More recently, the ANA touted a study claiming that the principles would kill 74,000 jobs a year.¹² It is difficult to understand how the principles can be simultaneously redundant and unnecessary, and so severe they will lead to massive layoffs.

It is hardly surprising that industry groups would flex their political muscle or resort to hyperbole to undermine an initiative that they fear will threaten profits. But it does suggest that the companies profiting from selling children on unhealthy food cannot be responsible partners in the effort to improve children's diets. Instead, the responsibility both for drafting nutrition principles and marketing definitions, and for insuring that companies comply, should be borne by those agencies whose mission is consumer protection and the promotion of children's health and wellbeing.

IV. ANOTHER APPROACH

As noted above, we believe the IWG did a commendable job in developing the nutrition principles and marketing definitions given the task it was issued by Congress. We also believe the proposed principles represent a significant improvement over the CFBAI, particularly if the IWG strengthens and clarifies the principles and definitions by incorporating the recommendations above.

Nevertheless, a regulatory approach that asks food companies to voluntarily work against their own self-interest is not the best way to combat marketing-related health problems like childhood obesity. Neither is using nutrition standards to determine which foods can and cannot be marketed to children. We remain convinced that the fairest and best way to improve children's wellbeing is to prohibit food companies from marketing all food to children. The advantages of this approach include:

¹⁰ Bachman, K. Advertisers Hope House Bill Will Squash New Food Guidelines, *AdWeek* (July 6, 2011), available at <http://www.adweek.com/news/advertising-branding/advertisers-hope-house-bill-will-squash-new-food-guidelines-133200>.

¹¹ Grocery Manufacturers Association, New Research Shows Dramatic Changes in Food and Beverage Ads Viewed By Children, (April 28, 2011), available at <http://www.gmaonline.org/news-events/newsroom/new-research-shows-dramatic-changes-in-food-and-beverage-ads-viewed-by-chil/>.

¹² Association of National Advertisers, Important New Data Clearly Show Impact of Proposed IWG Guidelines on Fragile Economic Recovery (July 8, 2011), available at <http://www.ana.net/content/show/id/21700>.

- It recognizes that children are developmentally vulnerable to commercial messages and that it's unethical to use technology and adult persuasion and expertise to manipulate children for profit.
- It empowers parents as decision makers, rather than undermining their role as gatekeepers by targeting children directly.
- It doesn't single out particular products or food categories.
- It's fairer to food companies. All food and beverage makers would play by the same rules. Under the proposed principles, companies that agree to comply may be at a competitive disadvantage.
- It's enforceable. Companies that violated a prohibition on marketing directly to children could be sanctioned, as occurs regularly in the province of Quebec.¹³
- It would improve children's diets significantly. Advertising aimed at parents would likely emphasize nutritional benefits instead of the current emphasis in child-directed food ads on toy premiums, peer acceptance, and the endorsement of spokescharacters. It is also likely that the composition of the food and beverages would shift considerably if advertisers had to direct their marketing to parents.

In addition to advocating for a prohibition on food marketing to children, there are a number of important interim steps that the FTC could take. It could start by focusing on those practices that are clearly designed to manipulate the youngest and most vulnerable children, such as using toys to entice children to fast food restaurants or the use of licensed cartoon characters. Such efforts would not only significantly improve the food marketing environment for children, but are likely to withstand First Amendment challenges.¹⁴

We recognize, of course, that the food and advertising industries will fight any prohibition on child-directed marketing, as they did in 1978 when the FTC rightly recognized that it was unfair to advertise to children eight and under.¹⁵ They will spend millions of dollars on lobbying, claim their First Amendment rights are being trampled, attempt to rally public opinion with accusations of government overreach, and release dubious studies that predict dire economic consequences if food marketing to children were banned.

But that is exactly what those industries are doing right now. It is clear that industry cooperation is not forthcoming regardless of the scope of the proposal to regulate food marketing to children, whether the approach is voluntary or mandated, or whether it is industry or a government agency that will monitor compliance. Given this inevitable and

¹³ Hamilton, G. The junk Food Wars: Quebec Scores Sweet Victory in the Battle Against Childhood Obesity. *National Post* (January 27, 2009), available at <http://www.commercialfreechildhood.org/news/2009/01/junkfoodwars.html>.

¹⁴ Campbell, A Restricting the Marketing of Junk Food to Children by Product Placement and Character Selling. *Loyola of Los Angeles Law Review: Symposium: Food Marketing to Children and the Law*, Volume 39, Number 1 (Fall 2005), available at <http://llr.lls.edu/volumes/v39-issue1/docs/campbell.pdf>.

¹⁵ Westen, T. Government Regulation of Food Marketing To Children: The Federal Trade Commission and The Kid-Vid Controversy. *Loyola of Los Angeles Law Review: Symposium: Food Marketing to Children and the Law*, Volume 39, Number 1 (Fall 2005), available at <http://llr.lls.edu/volumes/v39-issue1/docs/westen.pdf>.

intractable recalcitrance, we urge the FTC, after implementing these principles, to spend its time and resources developing a system—including asking Congress for additional authority—that would truly protect children from the excesses of the food and marketing industries, rather than wooing industries that continue to show blatant disregard for the wellbeing of children.

Respectfully submitted,

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July 14, 2011