

Concurring Statement of Commissioner Jon Leibowitz
*Marketing Food to Children and Adolescents:
A Review of Industry Expenditures, Activities, and Self-Regulation*
(July 29, 2008)

Childhood obesity in America is now an alarming problem. The proportion of overweight children ages six to eleven has increased almost *fivefold* in the last generation, growing from four percent in the early 1970s to nineteen percent by 2004.¹ One-third of our youth ages two to nineteen are either overweight or at risk of becoming so.² Overweight children and adolescents are more likely to develop serious chronic diseases such as high blood pressure, high cholesterol, and Type 2 diabetes – and are more likely to become obese as adults.³ The causes of childhood obesity, of course, are complex. A large part of the problem may have to do with changing lifestyles, more sedentary activities and less exercise. We all share some responsibility.

But to underscore the obvious, to some extent you are what you eat – and what children eat is influenced by what food is available and how it is marketed.⁴ Especially in an era with more working parents who rely on restaurants, take-out, and quick-fix processed foods, industry can play an instrumental role in helping to curb the obesity epidemic. To be fair, 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.⁵

Today's landmark Report is a monumental feast of facts and figures about marketing food and beverages to children and adolescents. On a somewhat surprising note, the \$1.6 billion in reported expenditures for food marketing to youth in 2006 (or almost \$2 billion if the cost of toys provided with fast-food children's meals is included) is much lower than previously estimated. And some of the creative efforts to market milk, fresh fruits and vegetables, and to promote healthy diets and active lifestyles to young people are a pleasing sweet spot.

Equally noteworthy, however, the Report documents how highly sophisticated, fully integrated, multi-platform, cross-promotional advertising campaigns targeting children and teens are more pervasive than previously appreciated. Simply put, movie, television, and other entertainment tie-ins are ubiquitous. Although traditional television advertising still dominates, new means of Internet and digital advertising are becoming a major marketing force, as advertising spreads from television networks to social networks.

The Report includes two other findings that leave a tinge of heartburn. First, the disproportionate amount (\$474 million) to market sugary carbonated beverages to adolescents is striking – that's nearly \$20 per American teenager in 2006.⁶ The marketing efforts must be working; on average, adolescents get eleven percent of their calories from soft drinks.⁷ Studies

show that those who drink more soda are more likely to become overweight.⁸ To their credit, the major carbonated beverage marketers entered an agreement with the Alliance for a Healthier Generation and have committed to phase out the sale of full-calorie sodas in schools, shifting to lower calorie and more nutritious beverages. Wouldn't a responsible next step be to extend this effort beyond the schoolhouse door, and curtail at least some marketing of full-calorie soft drinks to school-age youth – including teens – whether on television, via the Internet, in stores, or elsewhere?

Second, the big dollars to promote fast food restaurants to children are also somewhat hard to stomach: the \$520 million for advertising and the toys included with fast food children's meals was more than twice the amount spent by any other food category to target children under twelve in 2006.⁹ Some inner city low-income neighborhoods have numerous quick service restaurants but few grocery stores or markets that sell nutritious foods, so many of the children most at risk for obesity rely on fast food as a mainstay of their diets.¹⁰ Studies show that over-consumption of fast food likely contributes to overweight and obesity.¹¹ I recognize that McDonald's and Burger King are working to develop new, lower calorie menu items for children. But surely more can be done to add options to fast food menus and improve families' incentives to order healthier choices.

To be certain, food and beverage company participants in the Council of Better Business Bureaus' Children's Food and Beverage Advertising Initiative ("CBBB Initiative") have made significant strides; not only formulating new and improved products, but also reformulating their advertising directed to young children to promote healthier food and lifestyle choices. They should be commended for taking this first, important step. However, joining the CBBB Initiative is just that – a first step – and there is still a long way to go. Almost exactly a year ago at the FTC and Department of Health and Human Services Forum on childhood obesity, several of us urged participating companies to extend their commitments to all of their child-directed marketing efforts, and to find a more appropriate way to measure when advertising is targeted to children. A year has passed and, although two more companies have joined the Initiative, little additional progress has been made to improve either the companies' individual pledges or the Initiative's core principles.

If the CBBB Initiative is to serve as the gold standard for self-regulation in food marketing, it needs to strengthen its guidelines. Company pledges should apply not just to measured media, but to *all* forms of marketing directed to children (which, as our Report tangibly demonstrates, are many). The Report confirms that television, radio, print, and Internet account for about sixty percent of marketing to young children – the CBBB Initiative and company pledges fail to cover the remaining forty percent spent on product packaging, point-of-sale, and other promotions. In addition, the CBBB should standardize the qualifications for "healthy dietary choices," noting that "better for you" does not necessarily mean good for you. Moreover, a more appropriate standard for measuring a child audience could be created, bearing in mind that for a popular general audience show like *American Idol*, a modest percentage of children

watching translates into several million child viewers. Finally, the CBBB should create and implement a reliable system for monitoring company compliance.

Some in industry may criticize us for using our bully pulpit to encourage companies to do a better job of marketing healthier products to youth. Such criticism would be misguided. In many ways, industry self-regulation with encouragement from government is really a middle ground approach – somewhere between the government-mandated advertising restrictions adopted in some foreign nations (which might be subject to First Amendment challenge in this country) and the *laissez-faire* approach once urged by many in the business community. Indeed, especially here, a little government involvement – combined with a lot of private sector commitment – can go a long way toward the healthier future for our children that all of us want to see.

Endnotes

1. Centers for Disease Control and Prevention (“CDC”), Overweight and Obesity: Childhood Overweight: Overweight Prevalence, <http://www.cdc.gov/nccdphp/dnpa/obesity/childhood/prevalence.htm> (last visited July 17, 2008).
2. Cynthia L. Ogden, Margaret D. Carroll, Lester R. Curtin, Margaret A. McDowell, Carolyn J. Tabak & Katherine M. Flegal, *Prevalence of Overweight and Obesity in the United States, 1999-2004*, 295 JAMA 1594 at Table 2 (2006), available at <http://jama.ama-assn.org/cgi/content/full/295/13/1549/JOC60036T2>.
3. CDC, Overweight and Obesity: Childhood Overweight, <http://www.cdc.gov/nccdphp/dnpa/obesity/childhood/index.htm> (last visited July 17, 2008).
4. See Institute of Medicine of the National Academies, *Food Marketing to Children and Youth: Threat or Opportunity?* at ES-6 to ES-7, 7-6 to 7-7 (2006) (“IOM Study”) (concluding that there is strong evidence that television advertising influences the food and beverage preferences, purchase requests, and consumption of children ages 2 to 11).
5. See, e.g., *What the Candidates Had to Say*, Wash. Post Online, May 18, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/18/AR2008051801391.html> (quoting the Obama campaign statement that, “If voluntary adoption [of guidelines for marketing of foods and beverages to children] is not effective, Obama believes that these guidelines should be made mandatory and that the Federal Trade Commission should have the authority and the resources to monitor and enforce compliance.”); see also IOM Study, *supra* note 4, at ES-12, 7-12 (“If voluntary efforts related to advertising during children’s television programming are unsuccessful in shifting the emphasis away from high-calorie and low-nutrient foods and beverages to the advertising of healthful foods and beverages, Congress should enact legislation mandating the shift on both broadcast and cable television.”).
6. Calculated based on projected U.S. census data for teens. U.S. Census Bureau, Population Division, *Interim State Projections of Population by Single Year of Age: July 1, 2004 to 2030* (Apr. 21, 2005),

<http://www.census.gov/population/projections/DownldFile3.xls>.

7. North Carolina School Nutrition Action Comm., *Soft Drinks and School-Age Children: Trends, Effects, Solutions* (July 2002) (citations omitted) (also stating that one-third of teenage boys drink at least three cans of soda each day, and that teenagers are drinking twice as much soda as milk), *available at* http://www.communityhealth.dhhs.state.nc.us/dental/ed_resources/Soft_Drinks_and_School_Age_Children.pdf.

8. A study by the Harvard School of Public Health found that for each additional serving of soda or juice a child consumes per day, the child's chance of becoming overweight increases by 60 percent. *See* National Alliance for Nutrition and Activity, *Obesity and Other Diet-Related Diseases in Children*, <http://www.cspinet.org/nutritionpolicy/Kidshealthfacts.pdf> (last visited July 17, 2008) (citations omitted); *see also* Marvin E. Goldberg & Kunter Gunasti, *Creating an Environment in Which Youths are Encouraged to Eat a Healthier Diet*, 26 J. Pub. Pol. & Mktg. 162, 170-71 (2007) (noting the volume of sugared soft drinks that adolescents consume and citing studies finding an association between soft drink consumption and increased energy intake and body weight).

9. FTC, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation* at 20 (July 24, 2008) ("FTC Rept."). Because consumers actually pay for the toy that accompanies many fast food children's meals, companies responding to the FTC's Special Order did not include the cost of these "self-liquidating" toys in their premium expenditure data. However, because the toy is a significant part of many marketing campaigns, FTC staff was able to estimate the cost of the premiums that quick service restaurants incur. If these costs are considered, expenditures for child-directed marketing by fast food restaurants exceeded \$520 million. *Id.* at 19-20.

10. The Robert Wood Johnson Found. & Am. Heart Ass'n, *A Nation at Risk: Obesity in the United States* at 6, 23-24 (2005), *available at* <http://www.americanheart.org/downloadable/heart/1114880987205NationAtRisk.pdf>. On average, youth ages 11 to 18 eat at fast food restaurants twice a week. *Id.* at 23. In 2006, quick service restaurants served more than 1.2 billion children's meals with toys to children 12 and under. FTC Rept., *supra* note 9, at 19.

11. *See, e.g.*, Shanthy A. Bowman, Steven L. Gortmaker, Cara B. Ebbeling, Mark A. Pereira & David S. Ludwig, *Effects of Fast-Food Consumption on Energy Intake and Diet Quality Among Children in a National Household Survey*, 113 Pediatrics 112 (Jan. 2004); *see also* Marla Reicks, *Fast-Food Consumption Among Minority Adults and Adolescents*, Nutrinet (Univ. of Minn. Dep't of Food Sci. and Nutrition), Jan. 2005, *available at* www.fsci.umn.edu/pf/outreach/faculty_outreach/nutrinet/archives/january_2005/fast_food.html.