



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Advertising Practices

January 8, 2008

Alvin F. Poussaint, MD
Susan Linn, ED
Campaign for a Commercial-Free Childhood
c/o Judge Baker Children's Center
53 Parker Hill Avenue
Boston, MA 02120-3225

Dear Dr. Poussaint and Dr. Linn:

Chairman Majoras has asked me to respond to your June 28, 2007 letter concerning the marketing of violent entertainment to children. You express concern that movies rated PG-13 based on their violent content, such as *Transformers*, are being marketed to young children in advertising during children's television programming, as well as through other marketing techniques, such as tie-ins with food promotions and licensed toys. The staff of the Division of Advertising Practices has carefully reviewed your letter, along with your supplemental October 12, 2007 submission.

I. Background

Your letter details several examples of advertising and promotion to children under 13 for the PG-13-rated movie, *Transformers*, distributed by Paramount Pictures Corporation. You indicate, for example, that television advertising for the movie aired during children's programming on Nickelodeon, including shows such as *Jimmy Neutron* and *Fairly Odd Parents*.¹ The movie was also promoted through tie-ins with Kraft Lunchables and Burger King Kids Meals.² In addition, Hasbro, the manufacturer of Transformers brand toys, released a new line of

¹Both of these shows are rated TVY (appropriate for all children), according to Nickelodeon's web site, www.nick.com, and have a substantial children's audience. Your letter indicates that you recorded *Transformers* ads between 6:00 to 8:00 pm on June 25, 2007. According to Nielsen data, 79% of the Nickelodeon audience during this daypart is children ages 2 to 11. See Nielsen National People Meter, 2005-06 Kids' Season, cited at <http://www.cablemediasales.com/pages/nets/?cp=nets&sp=infor&net=nick>.

²Kraft's promotion included Transformers toys in its Lunchables meals and a Transformers game on its web site, <http://www.kraftbrands.com/lunchables/index.aspx?area=TRANSFORMERS>. Burger King's promotion included Transformers toys in its Kids Meals and television advertising that featured characters from the movie. Staff notes that the television ads include a reference that the movie is rated PG-13, with the accompanying statement that "Some material may be inappropriate for children under 13." Sample ad available at <http://www.movieweb.com/video/V07FdjqsuCLPUW>.

toys based on the movie and included images and clips from the movie in its marketing of those toys.³ Your letter requests that the Commission expand its monitoring to include the marketing of PG-13 movies.

As you are aware, the Federal Trade Commission has played an active role in monitoring the marketing of violent entertainment to children by the movie, music, and electronic game industries. Beginning with its first report on this subject in September 2000, and continuing in its five follow-up reports, including the most recent April 2007 Report, the FTC has consistently advocated for strong self-regulatory measures that would prohibit the direct sale and marketing to children of products labeled as inappropriate or warranting parental guidance due to their violent content.

In fact, although the Commission has focused more attention on curbing the inappropriate marketing of films rated R due to violent content, it has included PG-13 films as part of its ongoing monitoring and reporting efforts. In its September 2000 Report, for example, the FTC noted “extensive marketing – and in many instances, explicit targeting – of violent R films to children under the age of 17 and of violent PG-13 films to children under 13.”⁴ Specifically, the Commission examined twenty violent PG-13-rated films for its 2000 Report and found that the marketing materials for nine, or 45%, targeted children 11 and younger, including children as young as 6.⁵ The report cited examples of television advertising for seven of the violent PG-13 films during Saturday morning cartoon programs and on Cartoon Network and Nickelodeon.⁶ The Commission also looked at other promotional techniques for these films, beyond traditional television advertising, and found that “[t]oys, children’s clothing, and fast food appear to be the primary promotional methods for generating interest in PG-13 movies among children 11 and younger,” noting that these tie-ins were an “important facet of film promotion.”⁷ The Commission characterized the target marketing of R-rated films to children under 17 as “pervasive” and the target marketing of PG-13-rated films to children under 13 as

³Hasbro released a wide variety of action figures and other toys in conjunction with the *Transformers* movie for a range of ages, including very young children. See <http://www.hasbrotoyshop.com/ProductsByBrand.htm?BR=496&SBR=499>.

⁴Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (Sept. 2000) at 13, available at www.ftc.gov/reports/violence/vioreport.pdf.

⁵*Id.* at 14.

⁶*Id.* at 15.

⁷*Id.* at 17. One marketing plan for a PG-13 film explicitly targeted boys ages 4 to 14 with movie-related retail merchandise, including toys sold at Toys “R” Us and Kmart. *Id.* at n.98. Another promotion involved a tie-in with a toy for the Burger King Kids Meal. The report notes that Burger King used a card at the counter to notify parents that the film contained material inappropriate for children and that an alternative toy was available upon request. *Id.*

“common.”⁸ The agency recommended that the movie industry address both the placement of advertising in children’s media and the licensing of toys and other children’s products.⁹ The specific recommendations for the movie industry, however, focused on R-rated films and did not expressly call for marketing restrictions on PG-13-rated films.¹⁰

II. Current Industry Practices

Following the Commission’s 2000 Report, the Motion Picture Association of America responded with a twelve-point initiative that includes a commitment by member studios not to “inappropriately specifically target” children in advertising of films rated R for violence.¹¹ Neither the MPAA nor any individual studio, however, has formally adopted a policy against target-marketing PG-13 movies to children. Moreover, the MPAA has indicated to FTC staff that it does not consider the marketing of PG-13 movies directly to children to be per se inappropriate.¹² The MPAA distinguishes the PG-13 rating from the R and NC-17 ratings on the basis that the PG-13 rating includes no age restriction on admission. The MPAA describes the PG-13 rating as a “strong caution” to parents that they need “to determine whether their children

⁸*Id.* at 54.

⁹Subsequent monitoring efforts by the FTC and others indicate that movie studios continue to market some films rated PG-13 for violence to young children. *See, e.g.,* Marketing Violent Entertainment to Children: A Fourth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (July 2004) at n.30, *available at* www.ftc.gov/os/2004/07/040708kidsviolencecpt.pdf. The 2004 Report cites a few examples of ads for violent, PG-13 films placed on television programming directed at or appealing to youth under 13, including on cable channels such as the Cartoon Network, ABC Family, and Nickelodeon. In addition, as your letter notes, the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus has issued several opinions in the past two years challenging the advertising of PG-13-rated films during television programming with a substantial audience of children under 13 as a violation of CARU self-regulatory guidelines.

¹⁰With respect to movies, the report specifically called on industry to institute a code of conduct that would prohibit placing advertising for R-rated films in media or venues with a substantial under-17 audience and to prohibit licensees from marketing action figures, toys, and other products associated with R-rated films to under-age audiences and require a disclosure that the product is based on an R-rated film. 2000 Report at 54.

¹¹*See Marketing of Violent Motion Picture Products to Children*, Hearing Before the S. Committee on Commerce, Science, and Transportation (106th Cong.) (Sept. 27, 2000) (Statement of Jack Valenti, President and CEO, MPAA). Although not every movie studio is an MPAA member, the majority of larger studios subscribe to the twelve-point initiative, and some studios have also developed more specific standards.

¹²The statement accompanying the PG-13 rating reads, “Parents Strongly Cautioned - Some material may be inappropriate for children under 13.”

under 13 should view the motion picture, as some material might not be suited for them.”¹³ According to the MPAA, therefore, the PG-13 rating does not signify that the content is inappropriate for all children under 13.

Although the MPAA has not adopted express restrictions against the marketing of PG-13 movies to children, it does consider the content and placement of advertising for such movies on a case-by-case basis. The MPAA currently requires that all advertising and other promotional material for all rated movies be submitted to the MPAA’s Advertising Administration for review before being disseminated.¹⁴ As part of this review, the Advertising Administration requires that television ads be suitable for all viewers and not contain excessive violence or other inappropriate content. The Advertising Administration also considers the placement of television ads, stating that ads with depictions of violence and/or adult content “should be shown only with appropriate programming.”¹⁵ The MPAA Advertising Handbook states that the Advertising Administration will take into consideration audience demographics and may approve TV ads for placement only at certain times, on certain channels, or with certain programs.¹⁶ These restrictions on placement, however, appear to be triggered primarily by the presence of violent or adult content in the ad, rather than the rating of the movie.¹⁷ The MPAA handbook does not include express rating-based guidance or restrictions on placing advertising for PG-13 movies in children’s media. Similarly, individual studios do not appear to have any formal policies governing advertising and promotion of PG-13 movies to children. Although individual studio practices may vary slightly, in general, the studios appear to make case-by-case assessments of whether and how a PG-13 movie will be marketed to children. Some studios have indicated that they defer to the television network standards departments to determine appropriate placement of television advertising for PG-13 movies.¹⁸

¹³The ratings are defined on MPAA’s web site at http://www.mpa.org/FilmRat_Ratings.asp

¹⁴See 2006 MPAA Advertising Handbook, *available at* www.filmratings.com.

¹⁵ *Id.* at 31.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸See, e.g., Twentieth Century Fox Home Entertainment: “X-Men: The Last Stand” DVD Movie, NAD/CARU Case Report #4607 (12/01/06). In CARU’s self-regulatory challenge to Fox’s placement of advertising for the “X-Men” DVD during various children’s shows on Nickelodeon between 5 and 8 pm, Fox indicated that it had “relied on the judgment of the standards department of Nickelodeon as to the appropriate placement of the television advertisement.” See also Warner Brothers: “Superman Returns” Movie, NAD/CARU Case Report #4542 (08/14/06) (Warner Brothers indicated that ads were reviewed and approved by the Cartoon Network’s standards and practices division); Buena Vista Pictures Marketing: “Pirates of the Caribbean - Dead Man’s Chest” Movie, NAD/CARU Case Report #4558

III. Conclusion

Since its first report on the marketing of violent entertainment to children, the Commission has expressed concern that target marketing of violent movies, including movies rated PG-13, directly to children constitutes an “end run around the parental review role underlying the ratings.”¹⁹ The Commission, however, has concluded that there would be considerable difficulties in bringing a law enforcement action under Section 5 of the FTC Act and that significant and unsettled First Amendment issues also exist that would affect the viability of an FTC action or remedy to address these practices.²⁰ Instead, the Commission has repeatedly advocated vigorous self-regulation as the most viable approach to addressing concerns about the marketing of violent entertainment to children.

The MPAA descriptor that accompanies the PG-13 rating states “Parents Strongly Cautioned.” Although the MPAA asserts that the PG-13 rating does not signify that the movie is per se inappropriate for all children under 13, it also admonishes parents that the film “may be inappropriate for pre-teens,” and that parents “should be especially careful about letting their younger children attend.”²¹ Given this strong admonition to parents, the current policy of allowing marketing of PG-13 movies directly to a substantial number of children under the age of 13, without express guidelines or restrictions, could well be inconsistent with the rating.

Thus, while the staff recognizes that both the MPAA and individual studios currently consider the content and placement of PG-13 movies on a case-by-case basis, the staff nevertheless believes the industry should assess its current approach to determine whether it is adequate to ensure that PG-13 movies are marketed in a manner consistent with the rating. A more explicit policy, incorporating objective criteria, would provide better guidance to industry members and ensure that PG-13 movies are not marketed in a manner inconsistent with the rating.²² For example, the industry should examine whether it is feasible to develop guidelines to

(09/06/06) (Buena Vista stated that it relied on Nickelodeon’s clearance department to judge when it was appropriate to air the ad).

¹⁹2000 Report at 54.

²⁰In response to a request from Congress, the FTC analyzed the feasibility of bringing an action against such marketing pursuant to the prohibition against the use of unfair or deceptive acts or practices in or affecting commerce, found in Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. *See* Letter from Robert Pitofsky, Chairman, Federal Trade Commission, to Senator John McCain, Chairman, Senate Committee on Commerce, Science, and Transportation (Nov. 20, 2000) at 4.

²¹*See, e.g.*, “Everything You Always Wanted to Know About the Movie Rating System,” Joint Brochure of the Motion Picture Association of America, Inc. and the National Association of Theatre Owners (2007), *available at* <http://www.natoonline.org/ratingsabout.htm>.

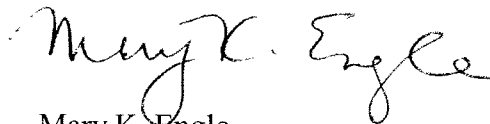
²²The staff also encourages toy manufacturers, restaurants, and other retailers to review their policies regarding movie-based toys and tie-ins to foods and other products appealing

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restrict advertising placement in media and other venues most popular with younger children. The staff notes, for instance, that the video game industry has implemented a formal policy against the marketing of Teen-rated games – those suitable for persons age 13 and older – to younger children.²³ Guidelines on the placement of advertising for PG-13 movies could take into account a range of factors including, among other things, the percentage of the audience under 13, the total number of young children reached, and the popularity with young children and apparent ages of the characters or performers. Other factors – such as the time of day an ad airs on radio or television – also could be considered.²⁴

The Commission staff will continue to monitor the marketing practices of the movie, music, and electronic game industries. The staff encourages all segments of the entertainment industry to implement strong self-regulatory measures against targeting children with marketing for movies, music, and electronic games that the industry itself acknowledges, through its ratings, contain content that may be inappropriate for children or warrant parental caution due to violence. Thank you for contacting the FTC with your concerns.

Very truly yours,



Mary K. Engle
Associate Director

cc: Motion Picture Association of America

primarily to young children, including whether information on the movie rating should accompany such tie-ins. Burger King has used such an approach in advertising tie-ins to its Kids Meals. *See supra* notes 2 and 7.

²³The Entertainment Software Rating Board’s advertising code lists several factors for assessing whether a Teen game is being appropriately marketed, including “audience composition or median age” of the media, and “evidence that the advertiser made good faith effort and reasonable assumptions to project that a significant portion of the audience would not be under 13 prior to the media buy.” *See Principles and Guidelines for Responsible Advertising Practices & Advertising Code of Conduct for the Interactive Entertainment Software Industry, Fourth Edition (amended April 1, 2006) at 10, as cited in Marketing Violent Entertainment to Children: A Fifth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (Apr. 2007) at 20, available at www.ftc.gov/reports/violence/vioreport.pdf.*

²⁴ These are the same factors that the Commission has repeatedly urged the industry to apply in tightening its existing placement guidelines for R-rated movies to better guard against marketing in media popular with an under-17 audience. *See, e.g., 2007 Report at 31-32 and 2004 Report at 28, n.225.*