

31 May 2005



Donald S. Clark, Secretary
Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Food Marketing to Kids Workshop—Comments, Project No. P034519

Dear Mr. Clark:

The Public Health Advocacy Institute, a non-profit organization in Boston, is providing the following comments on the upcoming FTC/DHHS Food Marketing to Kids Workshop (“Workshop”). The Public Health Advocacy Institute’s mission is to promote the use of law in common cause with public health and to provide research and advocacy on the effective use of law to promote the health and well-being of the public.

Given the seriousness of the epidemic of overweight and obesity, the FTC should be commended for exploring its role in regulating advertising to children and examining the effect advertising to children has on overweight and obesity. PHAI supports the FTC’s interest and activities in this area but disagrees with the FTC that self-regulation can be effective. History and law suggest that only positive regulatory activity will be effective in controlling advertising directed at children.

Food and Beverage Marketing to Children

The Public Health Advocacy Institute supports *Guidelines for Responsible Marketing to Children* (“*Guidelines*”) as a basis for the regulation of advertising to children¹. In supporting the substantive content of the *Guidelines*, we believe they should form the basis of state regulatory action rather than self-regulation by the industry.

The *Guidelines* emphasize that that any regulation of marketing to children must take into account both the method of marketing as well as the nutritional quality of the food marketed.² In addition to the marketing techniques outlined in the *Guidelines*, new marketing techniques,

¹ Center for Science in the Public Interest, *Guidelines for Responsible Marketing to Children* (January 2005), at <http://www.cspinet.org/marketingguidelines.pdf>.

² *Id.* at 2.

especially “viral marketing”, should be included in discussions at the workshop.³ Any discussion of marketing to children should also address the means employed in marketing research to ensure that industry both acknowledges and respects the ethical issues involved with the use of human subjects in information gathering.⁴

Existing Industry-Wide Self-Regulatory Programs

The existing industry-wide self-regulatory scheme, the Children’s Advertising Review Unit (“CARU”), has not been effective in regulating advertising directed at children and should be abandoned. CARU lacks clear and measurable guidelines rendering it ineffective as a self-regulatory framework. CARU lacks transparency in its process and is supported by the very organizations that it purports to regulate. Additionally, CARU lacks any authority to sanction violators of the guidelines. PHAI is providing an attachment to these comments that provides an analysis of CARU, an elaboration of our findings, and a brief discussion of CARU’s failure as a self-regulatory scheme.⁵

Individual Company Self-Regulatory Efforts & Best Marketing Practices

Both individual and industry-wide self-regulatory efforts are inherently problematic as the goals of public health and corporate goals are fundamentally in conflict. It is a well-accepted principle of corporate law that “[a] business corporation is organized and carried on primarily for the profit of the stockholders.”⁶ The directors and officers of a corporation are required to act for the benefit of their shareholders *alone*. While there has been some modification of this doctrine in recent corporate law, the *Dodge* principle remains the touchstone for corporate purpose and recent modifications are not yet settled law.⁷ While corporate activity may include philanthropic and ethical activities, it is clear that the *goal* of the corporation remains economic and that philanthropy and ethical behavior are only *permissive conduct*,

These Principles take as a basic proposition that a business corporation should have as its objective the conduct of such activities with a view to enhancing corporate profit and shareholder gain. This objective, which will hereafter be referred to as “the economic objective,” is embodied in Subsection (a) [the *Dodge* principle]. The basic proposition is qualified in the manner stated in Subsection (b) [outlining activities which were once considered *ultra vires*], which speaks to the conduct of the corporation. The provisions of Subsection (b) reflect a recognition that the corporation is a social as well as an economic institution, and accordingly that its pursuit of the economic objective must be constrained by social imperatives and may be qualified by social needs.⁸

³ See, Juliet B. Schor, *Born to Buy* (2004) (discussion of marketing techniques employed against children.); Susan Linn, *Consuming Kids* 95 – 104 (2004)(discussion of food marketing techniques and children).

⁴ Juliet Schor discusses in some detail the ethical lapses in market research. She found that companies often do not obtain permission of the parents or adequately protect the privacy of children who have been studied. See, Juliet Schor, *Born to Buy* 114 (2004).

⁵ See, Ben Kelley, *Industry Controls Over Food Marketing to Young Children: Are They Effective?* (2005), (“Attachment 1”).

⁶ *Dodge v. Ford Motor Co.*, 204 Mich. 459, 504 (Feb. 7, 1919).

⁷ 1 Principles of Corp. Governance §2.01(b) (1992);

⁸ 1 Principles of Corp. Governance §2.01 (1992)(Comment e).

The only true restriction on the corporate economic goal comes from the state through regulation, legislation and judicial action.

Public health, on the other hand, has a broad mission, “encompassing systematic efforts to promote physical and mental health and to prevent disease, injury, and disability...[to] prevent epidemics, protect against environmental hazards, [and] promote healthy behaviors.”⁹ Public health has as its focus the entire population, not a subset of the population. The narrow economic goal of corporate purpose is fundamentally at odds with the broader population goal of public health.

Self-regulation cannot be effective if it requires corporations to act against their purpose and does not include meaningful sanctions enforceable in law. Only *legal* requirements with accompanying sanctions, i.e. regulation, can relieve corporations of their primary legal obligations to their shareholders.

Education

Industry education efforts have been employed in the past and have often been unsuccessful either in their own right or in comparison to the additional industry marketing efforts to promote the consumption of products. The mixed record of industry efforts is a testament to the inherent conflict between the economic goals of a corporation and the public health goals of the education program. We provide a few examples from both tobacco and auto manufacturing.

In efforts to preclude federal auto-safety regulation in the mid-1960s, and subsequent efforts to blunt the force of such regulation or co-opt the government’s statutorily required role in controlling motor vehicle hazards, the auto industry has often been Janus-faced. It has paid lip service to “safe driving” exhortations, especially those directed at young people, while committing large budgets to marketing automobiles through messages that promote excessive speed, risk-taking, and reckless behavior. Some of these are in the form of paid advertisements, but a large segment of such marketing is via less overt means, such as product placement of new-car models in movie and television portrayals glamorizing speed, car chases and generally dangerous driving practices. The industry’s campaign to promote safe-driving was routinely dwarfed by its auto marketing programs, greatly diminishing or negating the effectiveness of the public health and safety goal.¹⁰

In a 2000 report in the *Bulletin of the World Health Organization*, relying upon internal industry documents now made public, the tobacco industry’s behavior in self-regulation is clearly described.¹¹ The authors make it clear that, “when pressure is building up and legislation appears unavoidable the industry’s first line of defence is to offer a voluntary agreement...the industry asserts that self-regulation, rather than government legislation, will suffice, and gives assurances...”¹² Self-regulation and industry-based education campaigns were not successful in

⁹ Lawrence Gostin, *Public Health Law* 16 (University of California Press 2000).

¹⁰ Ben Kelley, W.H. Haddon, “Alarming Role of the Modern Muscle Car,” *The National Underwriter* 1 (1969), reprinted as, “Muscle Cars, Newest Threat to Traffic Safety?,” 18 *Journal of Traffic Safety Education* 7-8 (1970).

¹¹ Yussuf Saloojee & Elif Dagli, “Tobacco industry tactics for resisting public policy on health,” 78 *Bulletin of the World Health Organization* 902 (2000), Ref. No. 00-0628.

¹² *Id.* at 906.

the control of tobacco. In fact, these campaigns were an integral part of industry strategy to avoid regulation and, at the same time, continue to advertise, promote and sell tobacco products.

Self-regulation and their concomitant industry education campaigns have been remarkable examples of industry adherence to its economic goal and rejection of its public health promises. The historical failure of these initiatives cannot be reasonably disputed, and there is little evidence that the food industry would behave any differently. In fact, the foundations of corporate law and policy would counsel that they would be compelled to behave similarly.

Plans for New Initiatives

Whatever substantive proposals for self-regulation are adopted or discussed at the workshop, only regulatory action by the FTC has the potential to be effective. There has been expressed concern over the agency's ability to regulate in face of the First Amendment, and the Chairman cited with approval the MPAA and ESRB rating systems for films and games respectively.¹³ The MPAA and ESRB systems have been effective as *rating* systems, which is contrasted to CARU's emphasis on substantive regulation.¹⁴ Additionally, films and video games would not be classified as commercial speech and are too dissimilar to advertising to provide useful comparison. Better analogy can be found in the experience with tobacco self-regulation.

The Federal Trade Commission has the authority to define acts and practices that are unfair or deceptive.¹⁵ While commercial speech carries some First Amendment protection, that protection is not without limit. *Central Hudson* articulates the four-part test applied to evaluate government regulation of commercial speech.¹⁶ What is essential to note is that the restrictions being proposed in relation to advertising to children would not necessarily reach the latter two prongs of the *Central Hudson* test. The primary concern with advertising to children is its truthfulness. Misleading advertising does not enjoy the same constitutional protection as truthful information, "there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity."¹⁷ Many of the more influential cases in commercial speech doctrine that have been mentioned in relation to this topic focus on *government regulation or suppression of accurate information*.¹⁸ This is simply not the case here. Additionally, the issue here is messages *directed at children*. Even in *Lorillard*, the Court did not dispute the effect of advertising on children but found the restrictions to be overbroad.¹⁹ This workshop is taking up advertising directed solely at children. No one suggests that food

¹³ Deborah Platt Majoras, Remarks at Obesity Liability Conference, 9 – 12 (May 11, 2005), *available at*, <http://www.ftc.gov/speeches/majoras/050511obesityliability.pdf>.

¹⁴ We do note that ESRB does maintain a system of monitoring advertising content similar to CARU. However, this system was not referenced in the Chairman's speech.

¹⁵ 15 U.S.C.A. §57a (2005). There is some question about the FTC's authority raised in 15 U.S.C.A. §57a(h) (2005). However, the FTC should actively limn this provision and act where possible. It is also clear that the restriction on authority in this provision *only* applies to "unfair" practices not "deceptive" or "misleading." Much has changed in the tenor and type of advertising directed at children since the initial adoption of the provision in 1980 and the FTC should strongly examine current advertising practices. However, should there be an external barrier imposed on the FTC in this area after regulatory action, the agency must work to ensure that any self-regulatory scheme have *meaningful and enforceable* sanctions.

¹⁶ See, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 100 S.Ct. 2343 (1980).

¹⁷ *Id.* at 2350.

¹⁸ See, *Rubin v. Coors Brewing Co.*, 514 US 476 (2002); *44 Liquormart, Inc. v. Rhode Island*, 517 US 484 (1996); *Lorillard Tobacco Co. v. Reilly*, 533 US 525 (2001).

¹⁹ *Lorillard Tobacco Co. v. Reilly*, 533 US 525, 560-561 (2001).

companies are directing product information to adults through cartoon characters and any restriction of advertising to children would not necessarily be overbroad.²⁰

Much of the advertising being targeted at children is neither accurate nor does it propose a commercial transaction to its target. Primarily, advertising of food to children focuses not on truthful information about the product but rather on marketing a concept of self²¹, dual messaging²², promoting nagging by children,²³ and trans-toying.²⁴ There is reason to believe that children are unable to understand advertising as a means of conveying information about a product and are not always able to distinguish it from programming.²⁵ If the target audience lacks the ability to discern the difference between advertising and programming or is unable to understand the information being conveyed, a strong argument can be made that it is *per se* misleading.

There is a strong basis to suggest that food advertising to children is misleading. Given the FTC's regulatory authority, it falls upon the FTC to regulate these misleading practices. Given the failure of self-regulatory schemes generally, the FTC must step in to provide concrete guidance with attached legal sanctions. The FTC is in a unique position to argue for a more inclusive reading of commercial speech doctrine that takes into account public health and, as we have tried to briefly indicate, commercial speech doctrine is not as restrictive to regulation as has been suggested. It is the Federal Trade Commission's obligation to defend its regulatory authority over commercial speech to protect the public's health rather than acquiesce to the economic goals of the private sector.

Conclusion

The Public Health Advocacy Institute submits these comments and attached CARU analysis with the hope that the workshop will focus on solutions to the problem of food advertising to children that have a real ability to improve the public health. We do not believe that self-regulation or industry education programs have proven to be successful in the past and do not see how they will be successful here. The Commission has the authority and duty to regulate directly in this area, and we urge the Commission to do so.

Regards,

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Managing Attorney

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²⁰ In fact, the industry practice of dual messaging demonstrates this point firmly. *See*, n.22 *infra*.

²¹ Juliet B. Schor, *Born to Buy* 47-51 (2004).

²² *Id.* at 58. Dual-messaging is targeting a child with one message and the parent with another. Kool-Aid engaged in this practice in the 1980's. They marketed Kool-Aid to kids as "cool and magical" while marketing Kool-Aid to mothers as good for kids "because it has Vitamin C in it."

²³ *Id.* at 60.

²⁴ *Id.* at 63. Trans-toying is the tactic of turning common items into playthings. This can be seen with Frito-Lay's colored cheetos, colored ketchup, hidden surprises in food, and packaging that suggests play.

²⁵ *Id.* at 66.

**Industry Controls Over Food Marketing To Young Children: Are They
Effective?**

Ben Kelley

This framing paper is one in a series of occasional papers being published by the Public Health Advocacy Institute (PHAI), Boston, MA. PHAI is a non-profit organization founded to improve the public health through the effective use of legal interventions.

PHAI is committed to exploring the use of law in common cause with public health. It pursues both advocacy and research in its programs and activities. Obesity, overweight and their associated conditions pose a serious threat to the health of the public. Government and corporate institutions shape the current food environment through nutrition, agricultural and informational policies. This toxic food environment is one of the many factors affecting weight and nutrition in the population. The law is an effective and necessary tool for reforming institutional policies that contribute to poor population health. PHAI explores the use of law as part of a comprehensive public health strategy to turn the tide of this worsening epidemic. PHAI applies legislation, regulation and litigation to this problem; produces research on the intersection of law and public health; and promotes collaboration between advocates, public health practitioners, policy makers and the legal community.

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In April 2005, Sen. Tom Harkin, the ranking minority member of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry and a sponsor of many bills related to child health, put the issue into perspective in an address to an advertising industry audience. (Harkin) He stated that \$12 billion a year is spent on child-directed advertising that works “brilliantly” to “persuade children to demand – to the point of throwing temper tantrums, if necessary – a regular diet of candy, cookies, sugary cereal, sodas and all manner of junk food.”

Harkin voiced the hope that “real restraint will come from *within* your industry. . . obviating the need for further federal regulation” of food marketing. But he warned that while CARU’s existence is “an *acknowledgement* by the advertising industry that irresponsible food marketing to children is a very real problem,” CARU “is not cutting it. It has no legal authority – and it has no teeth.” (emphasis in original)

Food industry representatives oppose government regulation and assert that so-called self-regulatory measures already in place within the industry are adequate.*

“... government regulation cannot be expected to mandate all that we would like advertising to accomplish, and broad restrictions can inadvertently suppress information that could help consumers. Self regulation, however, is ideally suited to address the role of advertising and marketing in promoting healthful choices affecting diet, nutrition and life style. Voluntary compliance with advertising guidelines is likely to be more effective than deliberation, interpretation and litigation over statutes and regulations that attempt to advance the public interest by restricting or mandating commercial communications.” (Molpus)

Following publication of Sen. Harkin’s remarks a GMA spokesperson was reported to have said that the organization would be “looking at what is working in the present system and building on that.” (FoodNavigator)

To what extent, if any, can the food industry effectively regulate the potentially damaging impact of food marketing to children, particularly as to their purchase and consumption of high-calorie, low-nutrition products? Is it doing so at present? If not, is it capable of doing so in the future? These questions are implicit in the divergent positions of health advocates and the industry. They are addressed in this paper.

Self-Regulation: An Overview

Over many decades of experience throughout the world, the performance record of industry self-regulation in addressing public health problems has been found to be problematic. Examples abound:

* The term “self-regulation” is ambiguous. Regulation is defined as “a law, rule, or other order prescribed by authority, esp. to regulate conduct.” (Random House-Webster) Can an industry effectively act as such an authority over itself? “...the term ‘self-regulation’ means that the industry or profession rather than the government is doing the regulation.” See Campbell for an exploration of this and other definitions. See also Jenkins and Hawkes for relevant observations.

An industry-generated “code of practice,” adopted by the Association of British Pharmaceutical Industry to regulate the promotion of prescription drugs in the United Kingdom, drew this evaluation in the *British Medical Journal*: “The ABPI’s wish to secure compliance with the code seems weaker than its wish to pre-empt outside criticism and action: its self regulation seems to be a service to itself rather than to the public.” (Herxheimer) The tobacco industry’s worldwide claims to self-regulate advertising to young people have been widely discredited: “The historical evidence indicates that self-regulation of cigarette advertising and promotion by the tobacco industry has been repeatedly given trials and has not worked.” (Richards) An examination of self-regulatory attempts to protect human health threats from food contact plastics in the U.K. concluded that the attempts “failed to provide an adequate public interest response” to the problem. (Rothstein)

A common criticism of many such regimes is their lack of meaningful sanctions against violators. “...self-regulation must meet standards if it is to avoid being seen as merely cosmetic. There must be strong independent input, well-resourced monitoring and tough sanctions for breaches of the rules.” (Bradley)

The “lengthy history in Washington of devising self-regulatory schemes as a tactical defense against new legislation” points to yet another common flaw in such regimes. (Boulding, Health Affairs) They have been so widely used by industries seeking to fend off legislation and regulatory intervention in their affairs that considerable doubt has arisen among public policy makers as to their potential for effectiveness. A pattern of self-regulatory failures in addressing health needs, such as by controlling the marketing excesses of the tobacco industry and the manufacture and sale of unsafe cars by the auto industry, has deepened such doubt.

Global Analysis

A comprehensive global analysis of self-regulation, published in 2001 under United Nations auspices, provides useful benchmarks for assessing the strengths and weaknesses of self-regulatory codes implemented by businesses and business sectors. (Jenkins, U.N Research Institute for Social Development) Prominent among these are the following:

Lack of Independent Monitoring: Provisions for effective monitoring are “crucial if [self-regulation] is to have any real impact.”

Unrealistic Performance Claims: Self-regulatory systems may be “seen as something more than they really are, and used to deflect criticism and reduce the demand for external regulation. In some cases, codes have led to a worsening of the situation of those whom they purport to benefit.”

Adopted Only After Bad PR: For companies that “tend to rely heavily on their corporate image” it is “not uncommon for a code to be adopted... in the aftermath of some major event that has been a public relations disaster for the company concerned.”

Adopted to Head Off Outside Pressure: “...corporations may adopt a code of conduct simply to pre-empt external pressure. Consultants have explicitly advocated such a strategy to deal with criticism from ‘watchdogs’.”

Weaknesses in Implementation and Compliance: To be meaningful, a self-regulatory scheme “must have clear methods of implementation and means to ensure that it is being complied with... In practice, implementation can only be guaranteed where there is an element of independent monitoring of codes of conduct.”

Discourages Stakeholder Involvement: “... in most cases, stakeholder involvement in implementation is minimal. This is paradoxical since the discourse of corporate responsibility is replete with references to stakeholders and the need to take account of more than narrowly defined financial returns. It is in this area that the contrast between rhetoric and reality is particularly jarring. In the absence of independent monitoring and verification, it is difficult to evaluate whether company codes are applied extensively in practice or remain mere expressions of good intentions.”

Absence of Sanctions: “There is also the further question of the sanctions imposed when a code is not adhered to. In many cases no clear sanctions are defined.”

The analysis, which is directed generally at global enterprises, concludes:

“It would be a mistake to see codes of conduct as a substitute for government regulation, and any realistic evaluation of codes must take this point into account.”

A detailed overview of the international dialogue concerning regulation of food marketing to children is available in a World Health Organization monograph published in 2004. (Hawkes)

CARU

The food industry’s claims for its self-regulatory approach are found in a number of documents published by or on behalf of organizations representing both it and the advertising industry. Principal among these are “The Advertising Industry’s Process of Voluntary Self-Regulation: Policies and Procedures” and “The White Paper.” Entities administering the procedures are the National Advertising Division (NAD) of the Better Business Bureau, National Advertising Review Council, National Advertising Review Board (NARB), and the Children’s Advertising Review Unit (CARU).

The industry-designated instrument for self-regulation of food industry marketing messages to children is CARU, a component of the National Advertising Review Council (NARC): “The Children’s Advertising Review Unit (CARU) is the self-regulatory body for children’s advertising and plays a major role by insuring truthful, non-deceptive advertising to children under the age of 12.” (White Paper)

CARU’s central role in the self-regulatory process is described in “About the Children’s Advertising Review Unit,” one of many explanatory documents found on CARU’s website (www.caru.org). It states that CARU was founded in 1974 to “promote responsible children’s advertising as part of a strategic alliance with the major advertising trade associations through the National Advertising Review Council (comprising the AAAA, the AAF, the ANA and the CBBB)” and to evaluate “child-directed advertising and promotional material in all media to advance truthfulness, accuracy and consistency with its *Self-Regulatory Guidelines for Children’s Advertising* and relevant laws.”

Other commentators not affiliated with CARU or the food or advertising industries have concluded that CARU was “established to forestall efforts by groups outside the industry which would severely restrict or even ban advertising to children.” (Armstrong, cited in Campbell) “Its creation was met with considerable skepticism by the FTC and consumer groups that questioned whether an organization funded by industry, especially one with so little consumer representation, could objectively regulate advertising practices.” (Campbell)

CARU was created amidst the growing concern of health advocates over child advertising abuses, primarily on television, including aggressive and deceptive marketing of sugary breakfast cereals. The concern led to the Federal Trade Commission’s 1978 Notice of Proposed Rulemaking to regulate such advertising, which was triggered by four petitions from consumer and health groups seeking regulatory action and by a sweeping FTC staff report recommending that the Commission undertake rulemaking to “explore possible unfairness and deception in children’s advertising.” (Schwartz) It also resulted in California litigation by the Committee on Children’s Television, one of the petitioners, against General Foods and other businesses for harmful advertising to children. (Daynard)

CARU’s Effectiveness

The food and advertising industries asserts that CARU is “a highly successful self-regulatory body with a success rate of over 95% in resolving issues regarding advertising to children.” (NARC White Paper) Dale Kunkel, coauthor of a 1993 study funded in part by CARU, in which that figure appeared, later characterized the findings as follows:

“An independent evaluation of compliance with the guidelines (Kunkel & Gantz, 1993) found that 96% of more than 10,000 ads met the CARU standards that offered specific criteria amenable to empirical examination (e.g., ‘a product should be demonstrated in a way that can be duplicated by the child for whom the product is intended’). But the same study also found that many of the guidelines were too vague and general to even be subject to empirical assessment (e.g., ‘care should be taken not to exploit a child’s imagination’).” (Kunkel, 2004)

Others have joined Kunkel in raising questions about the limits of the effectiveness estimates:

“While Kunkel and Gantz suggest that CARU has been largely successful in implementing the stated goals of the Guidelines, another interpretation is possible. One might wonder why if almost 4 percent of children’s commercials shown in one week violate the CARU Guidelines, CARU has only brought an average of fifteen cases per year. Moreover, the number of cases in recent years seems to have declined. During the first eight months of 1995, CARU reportedly monitored more than 10,000 commercials, yet initiated only thirty-five informal inquiries and three formal cases... [it] brings only a small number of cases each year against television advertisers, even though evidence suggests that hundreds of noncompliant advertisements are broadcast each week.” (Campbell)

Activities, Processes

CARU describes its basic activities as “the review and evaluation of child-directed advertising in all media, and online privacy practices as they affect children. When these are found to be misleading, inaccurate, or inconsistent with CARU’s Self-Regulatory Guidelines for Children’s Advertising, CARU seeks change through the voluntary cooperation of advertisers.” In 1996 CARU added guidelines that “highlight issues, including children’s privacy, that are unique to the Internet and online sites directed at children age 12 and under.”

Critics contend that CARU’s guidelines are needlessly vague and that its effectiveness is severely limited by, among other things, its inability to act against non-complying marketing material in a timely fashion – a weakness for which CARU was first challenged more than 20 years ago. (Wooten, Harty) CARU itself admits that its guidelines are “deliberately subjective.” (CARU) It defends this by arguing that the guidelines go “beyond the issues of truthfulness and accuracy to take into account the uniquely impressionable and vulnerable child audience,” but offers no explanation as to why this justifies a lack of objectivity in the guidelines. The need for objectivity in standards-setting, in contrast to “vague declarations of business principles,” has been well demonstrated over decades of regulatory experience. Effective self-regulation requires “clear methods of implementation and means to insure” compliance. (Jenkins)

Process Defects

The CARU process is weakened by its invisibility. It does not appear that CARU and its supporters advertise or otherwise promote awareness of CARU’s activities among consumers and other stakeholders, nor do they use public-service announcements or similar outlets to encourage parents, public health workers, educators and consumers to file complaints against possibly non-complying marketing materials aimed at children. More than 95% of its cases “arise from its own monitoring of television, print, radio and Website advertising” rather than from consumer-initiated investigations. This absence of outreach raises questions about the professed sincerity of the food and advertising companies’ asserted commitment to seek “more eyes and ears” to monitor such materials. (White Paper)

Even supporters of CARU’s objectives have called on CARU to “publicize its guidelines more widely so that parents and others can call to its attention to deviations from the guidelines.” (Kunkel, 2004) Although subscribing to CARU’s goals, Kunkel cautioned that “... the modest level of staffing at CARU and the practice of reviewing ads on a complaint-only basis cannot realistically accomplish these goals industry wide.” He has recommended that CARU “provide the publicity, the staffing, and the review practices necessary to achieve its stated principles and foster adherence to its guidelines.” More recently he has endorsed federal regulation of food messages targeting children. (Cato)

CARU’s review of marketing materials does nothing to prevent the broadcasting or website placement of non-complying messages. “When advertising is reviewed prior to dissemination to ensure that it is truthful and that all claims are adequately substantiated, such as by the television networks, legal violations can be prevented before they occur.” (Edelstein) But CARU’s reviews take place only after the fact – when triggered by staff monitoring or by complaints against

messages already being disseminated – and often do not reach their conclusion until after the messages have completed their run. Nor do they generally involve “legal violations,” since Congress and the Federal Trade Commission have been loathe to adopt comprehensive rules prohibiting such misrepresentations. (This “sets the United States apart from other developed countries that have chosen to ban all television advertising directed to young children, including Australia, Canada, and Great Britain.” (Kunkel, 2004))

As is true of other industries confronted with the possibility of government regulation on behalf of public health needs, food and advertising interests involved in marketing to children see self-regulation as a means of warding off such interventions. One of the three explicit industry-devised goals of CARU’s activities is to “minimize the need for government involvement in the advertising business.” (The others are to “increase public trust in advertising” and to “maintain a level playing field for settling disputes among competing advertisers.”) The goals do not include protecting the health of children. (White Paper)

CARU’s objectivity in reviewing complaints against food marketing materials aimed at children is brought into question by its procedures. Reviews, including appeals by dissatisfied parties challenging advertisements, are carried out exclusively by industry members or industry-funded staffs rather than independent experts. (Advertising Industry’s Process of Self-Regulation) GMA itself has acknowledged the essential nature of independent review: “Cooperation with an independent authority is often the first and sometimes the most important phase of consumer-protection regulation of advertising and marketing in numerous countries around the world.” (Molpus) CARU’s lack of what has been called in a similar context a “properly designed and executed third-party review” (Falk) creates the image, and perhaps the reality, of CARU and its decision-making process as little more than servants of the industries they ostensibly regulate and window-dressing for those industries.

Underscoring this failing is the nature of CARU’s financial support. Companies that fund its work and subscribe to its guidelines include some of the largest manufacturers and marketers of fast foods and beverages to children, as well as trade associations representing those companies. These include Burger King Corp., Frito-Lay, Inc., General Mills, Inc., Grocery Manufacturers of America, Inc., Hershey Foods Corp., Kellogg Company, Kraft Foods, Inc., Masterfoods USA, McDonald’s Corporation, National Confectioners Association, Nestle USA, Inc., PepsiCo Beverages & Food, and Sara Lee Corporation. Given the dominant roles played by these and other CARU-supporting companies and associations, it is unsurprising that CARU is essentially powerless to impose its guidelines.

In a talk to law students, CARU’s director said, “Some of our guidelines have no backup in law, so somebody can actually blow us off and all we do is publish the results and give them bad publicity...” (Lascoutx) This seems to be inevitable, given the built-in constraints on CARU’s ability to apply corrective measures to abusive messages. On finding a violation it simply issues a press release – whose intent, CARU emphasizes, is “not to punish” the offending advertiser or Website operator but merely to serve as an impetus for advertisers and Website operators to make voluntary changes to child-directed advertising.” (White Paper)

Other Problems

CARU's effectiveness is compromised in other respects as well:

--It may only consider messages "disseminated nationally or to a substantial portion of the United States," thus requiring it to turn a blind eye to the impact of regional advertising and marketing campaigns, some of which target statewide or multistate segments of the population. (Advertising Industry's Process) According to an ad industry consultant, "...local and regional advertisers spend more than \$19 billion a year in advertising development and media placement." (Nucifora)

--It does not monitor so-called "advergames," described in marketing material as "the use of interactive games to deliver advertising messages, develop brand awareness, and drive traffic to consumer-oriented web sites." (Blockdot) Nor does it monitor on-line advertising, which like advergames is a rapidly growing outlet for food industry marketing messages: "For the first time in years, the Super Bowl won't feature an ad for Frito Lay's Doritos snack chips. Instead, the Pepsi unit will shift those funds to marketing on the Internet." (Forbes) CARU's director has recently been quoted as saying, "Maybe we need to reevaluate that now, but not without notice to the world." (Parker) To date, no such notice has been given by CARU.

--It is unequipped to stay current with critically important changes in the methods and content of food marketing targeted at children. A report by the Motherhood Project[†], published after project members had met with the CARU director in 2004, pointed out the following:

"...advertisers are anxiously searching for ways to reach fragmented and jaded audiences, and, in the process, they are increasingly employing subversive and intrusive strategies to reach children—strategies that are at odds with CARU's principles... CARU currently has a staff of five and will soon add a bilingual ad review specialist—for a total of only six full-time employees. Its advisory board, according to its web site, currently consists of six academic advisors and 21 business advisors. CARU's staff is charged with 'monitoring advertising to children in *all* media.' [emphasis added] It also responds to consumer complaints and competitive challenges.

"With the explosion in advertising and marketing to children, the sheer volume of advertising material being developed, the new strategies being pursued, the quickly expanding number of outlets for advertising and marketing, and the abundance of resources available to advertisers and advertising agencies compared to its relatively modest resources, CARU cannot possibly monitor all the material directed at children." (Motherhood)

According to the Motherhood Project report, CARU's director confirmed that the organization "is limited in its ability to address many of the cutting-edge strategies that are now part of the

[†] The Mothers' Council, an affiliate of the Institute for American Values (AmericanValues.org) "consists of mothers of diverse backgrounds, professions, and political perspectives" who "seek to help mothers meet the unprecedented challenges of raising children in the 21st Century. The increasing commercialization of childhood is at the forefront of our current concerns."

children’s advertising landscape—strategies that include, but are not limited, to the nag factor (crafting ads to encourage children to nag until parents break down and buy); in-school marketing; peer-to-peer and viral marketing—techniques designed to market to children through personal interaction; advergaming—ads in video and computer games, and ads in movie theaters, video cassettes, DVDs.”

The report urged the industry to “quickly bring its practices more fully into line with CARU’s principles, strengthen CARU’s authority and capacity, and follow its guidance much more closely.” It also urged Congressional hearings into CARU’s activities and effectiveness.

Evaluating Messages

A number of observers have criticized CARU for the vagueness of its principles and guidelines for evaluating food messages targeted at children, as well as for its inability or unwillingness to effectively deal with the large volume of such messages as they appear in various formats – television commercials, print ads, on-line ads and games, and product placements. (Campaign, Center, Commercial). A few examples of recent messages that appear to fail even CARU’s “subjective” principles and guidelines follow. (Codes refer to the relevant principles/guidelines by category and number, see Appendix.)

Kellogg’s Tiger Power Frosted Flakes, Tiger Power cereals: Exemplifying the use of multimedia to target children in ways that CARU appears unable to control, messages promoting this product include the following:

- A television commercial (Nick Jr., Nickelodeon, 3/23/05) depicting a hockey team of youngsters chanting “Might, mighty tiger,” and announcer saying, “Have you got what it takes? Work hard and eat right with Kellogg Frosted Flakes as part of a complete breakfast.”
- A print ad in the June 2004 issue of National Geographic Kids, shows hockey players staring into the camera and asks, “Are You Supercharged?”
- A print ad in the April 2005 *Parenting Magazine*, labeled “Give him a boost” and “Gr-r-reat for Growth,” depicts a young child riding Tony the Tiger and lauds the product as “a whole grain cereal specially formulated to help kids grow... Calcium for strong bones and teeth, protein for strong muscles, and fiber to aid digestion. With a lightly sweet taste kids love.”
- Kellogg’s website (www.kelloggs.com/brand/tigerpower/index.shtml) states, in large print, “Grow Up Big and Strong with NEW Kellogg’s Tiger Power Cereal.”

Other Kellogg cereals, such as The Incredible and Spider-Man products, make similar “power theme” claims.

These messages violate CARU prohibitions of advertisements that “imply that purchase and use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising.” [SP2]; that “mislead children about benefits from use of the product. Such benefits may include... the acquisition of strength, status, popularity, growth...” [C2]; that

“mislead children about product or performance characteristics. Such characteristics may include...nutritional benefits” [C1].

Campbell’s Souperstar Island Instant Win Game and Sweepstakes: The message appears on television commercials, print ads, and internet site <http://www.mysoup.com>. It offers children a chance to win a week at “fantasy island” with a chef who will make volumes of Campbell’s soup. The sweepstakes offer is far more prominent than product information. No disclosure of winning likelihood is made.

The message violates the following CARU principles or guidelines:

When product advertising contains a premium message, “care should be taken that the child’s attention is focused primarily on the product. The premium message should be clearly secondary” [PPS1]; “Conditions of a premium offer should be stated simply and clearly [PPS2]; “The likelihood of winning should be clearly disclosed in language clearly understandable to the child audience” [SC2].

Hostess Cup Cakes print ad: The advertising campaign “Where’s the Cream Filling?” includes a print ad that features a frightened bird about to be smashed by a locomotive as he searches for the cream filling in a Hostess Twinkie (“Hey! Where’s the Cream Filling?”) It has appeared in the National Geographic Kids magazine and elsewhere. Other ads from this company similarly use violent themes such as an animal being crushed by a falling mailbox. CARU determined that the use of violence in these ads was “cartoonish” and therefore acceptable. Not covered by the guidelines is questionable material on the Hostess Cup Cake website pages. A “Fun Zone” for kids promotes a game, “Captain Cup Cake’s Treasure Hunt,” in which children seek a hidden treasure – “a box of Cup Cakes or other toys.”
<http://www.twinkies.com/actionvalley/captain.asp># A “Planet Postcard” zone offers formats for children to send e-mails replete with Hostess commercial material.
http://www.twinkies.com/planet_postcard/

The ads violate CARU principles or guidelines concerning portrayals of violence to children [C12], unfair exploitation of a child’s imagination [P2], and promotion of “positive and beneficial social behavior, such as friendship, kindness, honesty, justice, generosity and respect for others.” [P5]

National Geographic Kids magazine: The website <http://www.nationalgeographic.com/ngkids> is a good example of emerging marketing techniques that intertwine websites and print media – and are not addressed by CARU. The website provides an enticing “Clubhouse” door that links to various advertisers (including Hostess). There is no “club” despite the clear suggestion that clicking on the door leads to one. Even though the word “advertisement” is written above the door, it is improbable that a young child would read or understand it.

This violates CARU principles or guidelines concerning holding out to children that they are joining a club (KC1-KC3).

General Mills Cocoa Puffs: In a print ad in Disney Magazine (spring 2005) a small child is portrayed eating a bowl of the “reduced sugar” product. No “balanced meal” is shown. The bowl appears to greatly exceed the ½-cup recommended serving size. A television commercial on Nickelodeon for the same product, while showing a cartoon of the cereal with other breakfast components, emphasizes the “chocolaty” taste of the cereal.

These messages variously violate CARU principles or guidelines concerning balanced diet and encouraging product use that promotes healthy child development. [C8, C9]

Cap’n Crunch Cereal by Quaker Oats: In a television spot viewed at 2:45 p.m., February 21, 2005 on WB, Cap’n Crunch protects children from a nanny they believe will not let them eat the cereal. The bowl of cereal shown in the spot appears to exceed a single serving.

The message violates CARU principles or guidelines concerning balanced diet and encouraging product use that promotes healthy child development [C8, C9] and constructive contributions to the parent-child relationship [P7]

General Mills Trix cereal: A television commercial (Nick Jr, Nickelodeon, 3/23/05) features an announcement calling the product “the fruity part of a complete breakfast,” and shows an oversized bowl of the product with an orange and muffin. In fact, the product contains no fruit. Moreover, it is inaccurate that a sweetened cereal with a muffin and an orange can be considered a “complete breakfast” for a child, let alone a balanced one.

The messages violate CARU principles or guidelines requiring that representations of mealtime should “clearly and adequately depict the role of the product within the framework of a balanced diet [C9]; that children should not be misled about such product characteristics as nutritional benefits [C1], and that sound use of food products should be encouraged “with a view toward healthy development of the child and development of good nutritional practices.” [C8]

Dannon Danimals Drinkable Yogurt: Print ad in the April 2005 issue of Child Magazine depicts a young boy jumping high off ground and kicking. Headline text states, “2X more calcium for strong bones.” Copy states that the product had “2x more bone-building calcium than other leading kids’ yogurts plus Vitamin D. And 4 out of 5 pediatricians would recommend it to help meet kids’ calcium needs.”

The product label indicates a 10% calcium value. Other yogurts for children, such as Stonyfield Farms, have more calcium. Yoplait claims its yogurt is “the only leading yogurt with Vitamin D in every cup,” and had a child-targeted product, Yumsters, that is claimed to have both calcium and vitamin D. The “pediatricians would recommend” statement is confusing. Would recommend the product, or would recommend calcium? Nor is an attribution given for studies or other sources validating the statement.

The message violates the following CARU principles or guidelines:

Comparative advertising should “provide factual information” and “should not falsely represent other products or previous versions of the same product” [CC I]; “comparative claims should be

presented in ways that children understand clearly” [CC2]; “comparative claims should be supported by appropriate and adequate substantiation” [CC3]; messages “should not mislead children about product or performance characteristics” [C1].

Kraft’s Post cereals: A print ad for the eight child-targeted cereals in this group, in the May 2004 issue of National Geographic Kids, features super-hero characters (Justice League, DC comics) and directs, “Eat Cereal, Save the World” from a villain, Brainiac. “... only you and the Justice League can stop him” with a “free powercard” that actually requires purchase of the product. The text directs children to visit a website, www.postopia.com, where they are encouraged to play web games and seek rewards that can only be accessed by using “token” codes that appear inside the product’s packages. Purchase of the product is required; children are implicitly encouraged to nag parents or other caregivers to comply. The registration process, which cannot be completed without entry of a “token” code, uses simulated travel on a subway car defaced with graffiti.

The messages violate CARU principles or guidelines as follows:

Ads should contribute “in a constructive manner” to the parent-child relationship [P7]; advertisers should avoid using extreme sales pressure in advertising presentations to children, and children “should not be urged to ask parents or others to buy products” [SP1 and preamble]; messages should not “imply that purchase and use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising” [SP2].

Tyson: A series of television commercials and print ads (Parenting magazine, April 2005), under the theme “Powered by Tyson,” uses upbeat portrayals of adults and children “going strong all day” - jumping higher, playing hockey better, being stronger, etc. “Have you had your protein today?” the ads ask, showing a Tyson meat product. No other nutritional information is provided. Unlikely feats of prowess are shown in some spots, including a mother jumping to above the height of a basketball hoop and a child throwing a football an impossibly long distance. Risk-taking is shown in some television commercials, including boat-tow hang-gliding without a helmet.

CARU principles or guidelines violated include:

Messages “should not mislead children about product or performance characteristics,” including nutritional benefits [C1]; they should not “mislead children about benefits from use of the product,” including growth and strength [C2]; when athletic activities are shown, “proper precautions and safety equipment should be depicted” and “demonstrations that encourage dangerous or inappropriate use or misuse of the product” should be avoided. [SF4]

Discussion

Is the food industry effectively regulating the potentially damaging impact of food marketing to children, particularly as to their purchase and consumption of high-calorie, low-nutrition foods? If not, is it capable of doing so in the future?

Measured against the criteria identified above for assessing the effectiveness of self-regulation, it is clear that the industry's present effort remains seriously and chronically deficient. Nor does it seem likely, in light of CARU's behavior over more than three decades of operation, that the industry could or would undertake the reforms needed to make that effort effective in the future. CARU's "wish to secure compliance...seems weaker than its wish to pre-empt outside criticism and action," as one commentator has remarked of another industry. (Herxheimer)

Specifically, CARU...

- has failed to "provide an adequate public interest response" to public health needs.
- "lacks strong independent input, well-resourced monitoring and tough sanctions for breaches of the rules."
- does not act in a timely manner.
- applies "subjective" criteria in assessing advertisements.
- fails to seek inputs from consumers.
- does not review advertising "prior to dissemination."
- lacks third-party review of its decisions.
- has no legal standing, cannot enforce its decisions, can be ignored by advertisers.
- cannot consider regional ad campaigns.
- does not monitor advergames and generally cannot keep up with rapid changes in industry marketing.

CARU also fails to meet self-regulatory criteria indicated for the global business community, of which leading food marketers are a major component. (Jenkins, U.N. Research Institute). These failures include:

- Lack of independent monitoring, which is "crucial" to effective self-regulation. "...implementation can only be guaranteed where there is an element of independent monitoring of codes of conduct."
- Unrealistic performance claims, which have sometimes "led to a worsening of the situation of those whom they purport to benefit."
- Adoption of self-regulatory schemes "simply to pre-empt external pressure."
- Weaknesses in implementation and compliance, such as a lack of "clear methods of implementation and means to ensure that it is being complied with..."
- Discouragement of stakeholder involvement: "It is in this area that the contrast between rhetoric and reality is particularly jarring. In the absence of independent monitoring and verification, it is difficult to evaluate whether company codes are applied extensively in practice or remain mere expressions of good intentions."
- Absence of sanctions.

Beyond CARU

Obesity control is an urgent public health need. CARU's guidelines and procedures, however, are not driven by public health considerations and are not designed to meet public health criteria.

The World Health Organization monograph, *Marketing Food To Children: The Global Regulatory Environment* (Hawkes), raises the kind of questions that must be addressed before food marketing to children can be carried out in such a way that public health considerations are met. For instance, it asks how food marketing to children could become "a positive force for public health," whether more action is needed to "designate food as a product category in need of special consideration from a public health standpoint," and whether "a precautionary approach" involving "some form of global principles or approach" to such marketing is warranted. The WHO monograph concludes:

"Recent evidence shows that marketing affects food choice and influences dietary habits, with subsequent implications for weight gain and obesity. This review has shown there are many options available to oversee food marketing to children. Some consensus has recently emerged that the issue ought to be addressed by all stakeholders. The central question is therefore perhaps not whether to deal with the matter of food marketing to children, but rather how to deal with it in an effective way. A start would be to ensure that health is put in its rightful place at the centre of further policy development concerning the marketing of food to children."

A paper prepared for the U.K Food Standards Agency[†], *Does Food Promotion Influence Children? A Systematic Review of the Evidence* (Hastings), notes that the diet advertised to children is dominated by "pre-sugared breakfast cereals, soft-drinks, confectionary and savoury snacks," and "fast food outlets". It is a diet that "contrasts sharply with that recommended by public health advisors, and themes of fun and fantasy or taste, rather than health and nutrition, are used to promote it to children. Meanwhile, the recommended diet gets little promotional support."

The authors conclude there is sufficient evidence that children's diets may be influenced by food marketing practices:

"... the literature does suggest food promotion is influencing children's diet in a number of ways. This does not amount to proof; as noted above with this kind of research, incontrovertible proof simply isn't attainable. ... Nonetheless, many studies have found clear effects and they have used sophisticated methodologies that make it possible to determine that i) these effects are not just due to chance; ii) they are independent of other factors that may influence diet, such as parents' eating habits or attitudes; and iii) they occur at a brand and category level. Furthermore, two factors suggest that these findings

[†] The Food Standards Agency is an independent food safety watchdog set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.

actually understate the effect that food promotion has on children. First, the literature focuses principally on television advertising; the cumulative effect of this combined with other forms of promotion and marketing is likely to be significantly greater. Second, the studies have looked at direct effects on individual children, and understate indirect influences. For example, promotion for fast food outlets may not only influence the child, but also encourage parents to take them for meals and reinforce the idea that this is a normal and desirable behaviour.”

Finding that the evidence is sufficient to show that food promotion influences children’s diet, the paper recommends that “the debate should now shift to what action is needed, and specifically to how the power of commercial marketing can be used to bring about improvements in young people’s eating.” Clearly that debate must place the highest priority on the public health needs of children.

Conclusion

Based on the analysis in this paper, it is unrealistic to expect that the U.S. advertising and food industries can or will make a positive contribution to obesity control by becoming effective self-regulators of marketing that targets children with messages urging purchase and consumption of high-calorie, low-nutrition foods. Does this compel the conclusion that government regulation of such messages is called for? As stated in Jenkins, *Corporate Codes of Conduct Self-Regulation in a Global Economy*, “It would be a mistake to see codes of conduct as a substitute for government regulation, and any realistic evaluation of codes must take this point into account.” (Jenkins, U.N.)

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Appendix[§]

References in the report text are to the bracketed letter/number designations below, which were added for this appendix.

Principles [P1-P7]

Seven basic Principles underlie CARU's Guidelines for advertising directed to children under 12:

[P1] – Advertisers should always take into account the level of knowledge, sophistication and maturity of the audience to which their message is primarily directed. Younger children have a limited capacity for evaluating the credibility of information they receive. They also may lack the ability to understand the nature of the personal information they disclose on the Internet. Advertisers, therefore, have a special responsibility to protect children from their own susceptibilities. P2] - Realizing that children are imaginative and that make-believe play constitutes an important part of the growing up process, advertisers should exercise care not to exploit unfairly the imaginative quality of children. Unreasonable expectations of product quality or performance should not be stimulated either directly or indirectly by advertising.

[P3] - Products and content which are inappropriate for children should not be advertised or promoted directly to children.

[P4] - Recognizing that advertising may play an important part in educating the child, advertisers should communicate information in a truthful and accurate manner and in language understandable to young children with full recognition that the child may learn practices from advertising which can affect his or her health and well-being.

[P5] - Advertisers are urged to capitalize on the potential of advertising to influence behavior by developing advertising that, wherever possible, addresses itself to positive and beneficial social behavior, such as friendship, kindness, honesty, justice, generosity and respect for others.

[P6] - Care should be taken to incorporate minority and other groups in advertisements in order to present positive and pro-social roles and role models wherever possible. Social stereotyping and appeals to prejudice should be avoided.

[P7] - Although many influences affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner.

Product Presentations and Claims [C1-C13]

Children look at, listen to and remember many different elements in advertising. Therefore, advertisers need to examine the total advertising message to be certain that the net communication will not mislead or misinform children.

[C1] - Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to, size, speed, method of operation, color, sound, durability and nutritional benefits.

[§] Excerpted from CARU Self-Regulatory *Guidelines for Children's Advertising*, copyright 1975, 2003 Better Business Bureaus. Available at: <http://www.caru.org/guidelines/index.asp>

[C2] - The advertising presentation should not mislead children about benefits from use of the product. Such benefits may include, but are not limited to, the acquisition of strength, status, popularity, growth, proficiency and intelligence.

[C3] - Care should be taken not to exploit a child's imagination. Fantasy, including animation, is appropriate for younger as well as older children. However, it should not create unattainable performance expectations nor exploit the younger child's difficulty in distinguishing between the real and the fanciful.

[C4] - The performance and use of a product should be demonstrated in a way that can be duplicated by the child for whom the product is intended.

[C5] - Products should be shown used in safe ways, in safe environments and in safe situations.

[C6] - What is included and excluded in the initial purchase should be clearly established.

[C7] - The amount of product featured should be within reasonable levels for the situation depicted.

[C8] - Representation of food products should be made so as to encourage sound use of the product with a view toward healthy development of the child and development of good nutritional practices.

[C9] - Advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet.

[C10] - Snack foods should be clearly represented as such, and not as substitutes for meals.

[C11] - In advertising videos, films and interactive software, advertisers should take care that only those which are age-appropriate are advertised to children. If an industry rating system is available, the rating label should be prominently displayed. Inconsistencies will be brought to the attention of the rating entity.

[C12] - Portrayals or encouragement of behavior inappropriate for children (e.g.: violence or sexuality) and presentations that could frighten or provoke anxiety in children should be avoided.

[C13] - If objective claims are made in an advertisement directed to children, the advertiser should be able to supply adequate substantiation.

Sales Pressure [SP1-SP3]

Children are not as prepared as adults to make judicious, independent purchase decisions. Therefore, advertisers should avoid using extreme sales pressure in advertising presentations to children.

[SP1] - Children should not be urged to ask parents or others to buy products. Advertisements should not suggest that a parent or adult who purchases a product or service for a child is better, more intelligent or more generous than one who does not. Advertising directed toward children should not create a sense of urgency or exclusivity, for example, by using words like "now" and "only".

[SP2] - Benefits attributed to the product or service should be inherent in its use. Advertisements should not convey the impression that possession of a product will result in more acceptance of a child by his or her peers. Conversely, it should not be implied that lack of a product will cause a child to be less accepted by his or her peers. Advertisements should not imply that purchase and use of a product will confer upon the user the prestige, skills or other special qualities of characters appearing in advertising.

[SP3] - All price representations should be clearly and concisely set forth. Price minimizations such as "only" or "just" should not be used.

Disclosures and Disclaimers [D1-D6]

Children have a more limited vocabulary and less developed language skills than do adolescents and adults. They read less well, if at all, and rely more on information presented pictorially than verbally. Simplified wording, such as "You have to put it together" instead of "Assembly required," significantly increases comprehension.

[D1] - All disclosures and disclaimers that are material to a child should be in language understandable by the child audience, legible and prominent. When technology permits, both audio and video disclosures are encouraged, as is the use of demonstrative disclosures.

[D2] - Advertising for unassembled products should clearly indicate that they need to be put together to be used properly.

[D3] - If any item essential to use of the product, such as batteries, is not included, this fact should be disclosed clearly.

[D4] - Information about products purchased separately, such as accessories or individual items in a collection, should be disclosed clearly.

[D5] - If television advertising to children involves the use of a toll-free telephone number, it must be clearly stated, in both audio and video disclosures, that the child must get an adult's permission to call.

- In print or online advertising, this disclosure must be clearly and prominently displayed.
- In radio advertising, the audio disclosure must be clearly audible.
- If an advertiser creates or sponsors an area in cyberspace, either through an online service or a Website, the name of the sponsoring company and/or brand should be prominently featured, (including, but not limited to wording such as "The ... Playground", or "Sponsored by ...").

[D6] - If videotapes, CD-ROMs, DVDs or software marketed to children contain advertising or promotions (e.g. trailers) this fact should be clearly disclosed on the packaging, and the advertising itself should be separated from the program and clearly designated as advertising.

Comparative Claims [CC1-CC3]

Advertising which compares the advertised product to another product may be difficult for young children to understand and evaluate. Comparative claims should be based on real product advantages that are understandable to the child audience.

[CC1] - Comparative advertising should provide factual information. Comparisons should not falsely represent other products or previous versions of the same product.

[CC2] - Comparative claims should be presented in ways that children understand clearly.

[CC3] - Comparative claims should be supported by appropriate and adequate substantiation.

Endorsement and Promotion by Program or Editorial Characters [EP1-EP6]

Studies have shown that the mere appearance of a character with a product can significantly alter a child's perception of the product. Advertising presentations by program/editorial characters may hamper a young child's ability to distinguish between program/editorial content and advertising.

[EP1] - All personal endorsements should reflect the actual experiences and beliefs of the endorser. Celebrities and real-life authority figures may be used as product endorsers, presenters, or testifiers. However, extra care should be taken to avoid creating any false impression that the use of the product enhanced the celebrity's performance.

[EP2] - An endorser represented, either directly or indirectly, as an expert must possess qualifications appropriate to the particular expertise depicted in the endorsement.

[EP3] - Program personalities, live or animated, should not be used to sell products, premiums or services in or adjacent to programs primarily directed to children in which the same personality or character appears.

[EP4] - Products derived from or associated with program content primarily directed to children should not be advertised during or adjacent to that program.

[EP5] - In print media primarily designed for children, a character or personality associated with the editorial content of a publication should not be used to sell products, premiums or services in the same publication.

[EP6] - For print and interactive electronic media in which a product, service, or product/service-personality is featured in the editorial content (e.g., character-driven magazines or Websites, product-driven magazines or Websites, and club newsletters) guideline 4 does not specifically apply. In these instances advertising content should nonetheless be clearly identified as such.

Premiums, Promotions and Sweepstakes [PPS1-PPS2]

The use of premiums, promotions and sweepstakes in advertising has the potential to enhance the appeal of a product to a child. Therefore, special attention should be paid to the advertising of these marketing techniques to guard against exploiting children's immaturity.

[PPS1] - Children have difficulty distinguishing product from premium. If product advertising contains a premium message, care should be taken that the child's attention is focused primarily on the product. The premium message should be clearly secondary.

[PPS2] - Conditions of a premium offer should be stated simply and clearly. "Mandatory" statements and disclosures should be stated in terms that can be understood by the child audience.

Kids' Clubs [KC1-KC3]

In advertising to children, care should be taken not to mislead them into thinking they are joining a club when they are merely making a purchase or receiving a premium. Before an advertiser uses the word "club", certain minimum requirements should be met. These are:

[KC1] - Interactivity - The child should perform some act constituting an intentional joining of the club, and receive something in return. Merely watching a television program or eating in a particular restaurant, for example, does not constitute membership in a club.

[KC2] - Continuity - There should be an ongoing relationship between the club and the child member, for example, in the form of newsletter or activities, at regular intervals.

[KC3] - Exclusivity - The activities or benefits derived from membership in the club should be exclusive to its members, and not merely the result of purchasing a particular product.

Sweepstakes and Contests [SC1-SC5]

In advertising sweepstakes to children, care should be taken not to produce unrealistic expectations of the chances of winning, or inflated expectations of the prize(s) to be won. Therefore:

[SC1] - The prize(s) should be clearly depicted.

[SC2] - The likelihood of winning should be clearly disclosed in language clearly understandable to the child audience (for instance, where appropriate, "Many will enter, a few will win."). In appropriate media, disclosures must be included in the audio portion.

[SC3] - All prizes should be appropriate to the child audience.

[SC4] - Alternate means of entry should be disclosed.

[SC5] - Online contests or sweepstakes should not require the child to provide more information than is reasonably necessary. Any information collection must meet the requirements of the Data Collection section of the Guidelines and the federal Children's Online Privacy Protection Act (COPPA). [For examples of compliant information collection practices for this purpose, please visit <http://www.caru.org/news/collection.asp>].

Safety [SF1-SF4]

Imitation, exploration and experimentation are important activities to children. They are attracted to commercials in general and may imitate product demonstrations and other actions without regard to risk. Many childhood accidents and injuries occur in the home, often involving abuse or misuse of common household products.

[SF1] - Products inappropriate for use by children should not be advertised directly to children. This is especially true for products labeled, "Keep out of the reach of children." Such inappropriate products or promotions include displaying or knowingly linking to the URL of a Website not in compliance with CARU's Guidelines. Additionally, such products should not be promoted directly to children by premiums or other means. Medications, drugs and supplemental vitamins should not be advertised to children.

[SF2] - Advertisements for children's products should show them being used by children in the appropriate age range. For instance, young children should not be shown playing with toys safe only for older children.

[SF3] - Adults should be shown supervising children when products or activities could involve a safety risk.

[SF4] - Advertisements should not portray adults or children in unsafe situations, or in acts harmful to themselves or others. For example, when athletic activities (such as bicycle riding or skateboarding) are shown, proper precautions and safety equipment should be depicted.

Advertisements should avoid demonstrations that encourage dangerous or inappropriate use or misuse of the product. This is particularly important when the demonstration can be easily reproduced by children and features products accessible to them.

Making a Sale [MS1-MS3]

Advertisers who transact sales with children online should make reasonable efforts in light of all available technologies to provide the person responsible for the costs of the transaction with the means to exercise control

over the transaction. If there is no reasonable means provided to avoid unauthorized purchases of goods and services by children, the advertiser should enable the person responsible to cancel the order and receive full credit without incurring any charges. Advertisers should keep in mind that under existing state laws, parents may not be obligated to fulfill sales contracts entered into by their young children.

[MS1] - Children should always be told when they are being targeted for a sale.

[MS2] - If a site offers the opportunity to order or purchase any product or service, either through the use of a "click here to order" button or other on-screen means, the ordering instructions must clearly and prominently state that a child must have a parent's permission to order.

[MS3] - In the case of an online means of ordering, there should be a clear mechanism after the order is placed allowing the child or parent to cancel the order.

Data Collection [DC1-DC10]

The ability to gather information, for marketing purposes, to tailor a site to a specific interest, etc., is part of the appeal of the interactive media to both the advertiser and the user. Young children however, may not understand the nature of the information being sought, nor its intended uses. The solicitation of personally identifiable information from children (e.g., full names, addresses, email addresses, phone numbers) triggers special privacy and security concerns.

Therefore, in collecting information from children under 13 years of age, advertisers should adhere to the following principles:

[DC1] - In all cases, the information collection or tracking practices and information uses must be clearly disclosed, along with the means of correcting or removing the information. The disclosure notice should be prominent and readily accessible before any information is collected. For instance, in the case of passive tracking, the notice should be on the page where the child enters the site. A heading such as "Privacy", "Our Privacy Policy", or similar designation which allows an adult to click on to obtain additional information on the site's information collection and tracking practices and information uses is acceptable.

[DC2] - When personal information (such as email addresses or screen names associated with other personal information) will be publicly posted so as to enable others to communicate directly with the child online, or when the child will be able otherwise to communicate directly with others, the company must obtain prior verifiable parental consent.

[DC3] - When personal information will be shared or distributed to third parties, except for parties that are agents or affiliates of the company or provide support for the internal operation of the Website and that agree not to disclose or use the information for any other purpose, the company must obtain prior verifiable parental consent.

[DC4] - When personal information is obtained for a company's internal use, and there is no disclosure, parental consent may be obtained through the use of email coupled with some additional steps to provide assurance that the person providing the consent is the parent.

[DC5] - When online contact information is collected and retained to respond directly more than once to a child's specific request (such as an email newsletter or contest) and will not be used for any other purpose, the company must directly notify the parent of the nature and intended uses of the information collected, and permit access to the information sufficient to permit a parent to remove or correct the information.

In furtherance of the above principles, advertisers should adhere to the following guidelines:

[DC6] - The advertiser should disclose, in language easily understood by a child, why the information is being requested (e.g., "We'll use your name and email to enter you in this contest and also add it to our mailing list") and whether the information is intended to be shared, sold or distributed outside of the collecting advertiser company.

[DC7] - If information is collected from children through passive means (e.g., navigational tracking tools, browser files, etc.) this should be disclosed along with what information is being collected.

[DC8] - Advertisers should encourage the child to use an alias (e.g., "Bookworm", "Skater", etc.), first name, nickname, initials, or other alternative to full names or screen names which correspond with an email address for any activities which will involve public posting.

[DC9] - The operator should not require a child to disclose more personal information than is reasonably necessary to participate in the online activity (e.g., play a game, enter a contest, etc.).

[DC10] - The interactivity of the medium offers the opportunity to communicate with children through electronic mail. While this is part of the appeal of the medium, it creates the potential for a child to receive unmanageable amounts of unsolicited email. If an advertiser communicates with a child by email, there should be an opportunity with each mailing for the child or parent to choose by return email to discontinue receiving mailings.