

June 29, 2005

Donald S. Clark  
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 – Comment, Project No. P034519

Dear Mr. Clark:

The Children’s Advertising Review Unit (CARU), the self-regulatory arm of the children’s advertising industry, appreciates the opportunity to provide these comments to the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) on the issue of Marketing, Self-Regulation and Childhood Obesity.

CARU is a division of the Council of Better Business Bureaus (CBBB). CBBB is the national organization for the 117 BBBs in the United States, and its members include about 250 national and multinational corporations that support its work. CARU was created in 1974 at the request of the advertising industry to ensure that all advertising to children under 12 is truthful, accurate and takes into consideration young children’s still developing cognitive abilities. CARU is administered by CBBB, which funds its operations through direct support from advertisers and from CBBB general membership dues. CARU policy is set by the National Advertising Review Council (NARC), which is a collaboration between CBBB and the three major advertising associations—ANA, AAAA, and AAF. This partnership serves the public well—it marries the desire of the advertising industry to maintain and enhance credibility in advertising with the objectivity, experience and public trust of the Better Business Bureau system. CARU is the child-directed arm of a comprehensive self-regulatory system under the NARC umbrella; its counterpart, the National Advertising Division of CBBB, works to ensure the truth, accuracy and credibility of advertising directed to older children and adults.

The industry’s self-regulatory system is effective, efficient, robust, independent and transparent. CARU policies are set by NARC, relying on the practical experience of industry advertising experts and the self-regulatory experience of the CBBB. Ultimately, CARU receives its financial support from advertisers—this is, after all, “self” regulation - but it is operated on a day to day basis independently from NARC and financial supporters, by CARU staff, under the aegis of the CBBB.

The industry’s self-regulatory system is active and effective in fulfilling its mandate. CARU’s mandate is clear – to monitor and evaluate advertising messages to children, in all media, for compliance with its *Self-Regulatory Guidelines for Children’s Advertising*

(the *Guidelines*) (attached), also available at <http://www.caru.org/guidelines/guidelines.pdf> . These are a comprehensive set of standards based on the following seven basic principles that form the underpinning of what CARU does.

1. 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.

2. 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.

3. Products and content which are inappropriate for children should not be advertised or promoted directly to children.

4. 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.

5. 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.

6. 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.

7. 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.

The *Guidelines* were developed to address two very broad, overarching issues of concern to advertisers and parents.

The first involves the special steps needed to assure that the different cognitive abilities of kids under 12 are taken into account when directing advertising to these kids. At the time CARU was established it was widely understood that children are not just “little adults” and that their cognitive abilities are more limited than those of older children or

adults. The literature generally identified 12 years as the developmental divide between childhood and adolescence. It was with this in mind that NARC established CARU, with an advisory board of experts in child development, to look beyond truth and accuracy in ensuring that advertising messages directed to children were clear and understandable to their intended audience.

The second overarching issue addressed by the *Guidelines* is assuring that the privacy of children and their families is protected while the benefits of online marketing are enjoyed by them. CARU and its supporters demonstrated innovation and leadership on this front as well, by establishing the first comprehensive set of recommendations to the children's advertising industry about when it was and was not appropriate to collect, maintain or use personal information obtained from children, and CARU's work became the underpinning for the landmark COPPA legislation approved by Congress.

In both of the fundamental areas addressed by the program, CARU, CBBB and NARC have been pioneers in protecting children from inappropriate marketing to kids.

CARU staff monitors roughly 1,000 commercials each month, in addition to print and radio ads and Websites. Television monitoring focuses on media "directed" to children under the age of 12. This includes dedicated programming such as on Nickelodeon, Cartoon Network or Radio Disney, broadcast and cable TV during traditional children's day parts and fringe and early prime time programming with a significant under-12 audience demographic.

Over its history CARU has conducted inquiries into over 1,200 specific child-directed ads. And for over thirty years children's marketers, including the food and beverage industry, have followed CARU's *Guidelines*, many of which impose limitations far beyond those imposed by any law or regulation. Since January 2003 there have been 253 individual ads or Websites that CARU recommended be modified or discontinued, and in 247 of those instances the advertiser complied. That's a compliance rate of *over 97%*.

CARU *Guidelines* and its self-regulatory activities induce beneficial changes to advertising even in the absence of CARU adjudications recommending modification or discontinuance of particular ads. For example, CARU recently initiated discussions with leading producers of "fruit snacks" about whether or not the category name used for these products might confuse children and lead them to think they might have more fruit content than they do. As a result of this dialogue these companies decided to change the name of their current products to reflect that they are "fruit *flavored* snacks" to avoid the incorrect assumption that they have a higher fruit content than they actually do. This is a good example of how the flexibility of self-regulation works to obtain voluntary change.<sup>1</sup>

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<sup>1</sup> During the course of these discussions, to further explore whether the term "fruit snack" was confusing and inconsistent with CARU *Guidelines*, CARU opened several cases. Neither case openings nor administrative closings represent CARU determinations as to the applicability of the *Guidelines* to any particular advertising. Openings are merely the beginning of an inquiry to determine their applicability, and administrative closings such as these end the inquiry without CARU making a final determination.

It is important to clearly understand what CARU has *not* been asked to consider. As indicated, CARU was created to ensure that advertising directed to children is truthful, accurate, and appropriate for its intended audience. It was not established to be the arbiter of what products should or should not be manufactured, sold, or marketed to children, or to decide what foods are “healthy”, or to tell parents or children what they should or shouldn’t buy.

This distinction makes sense. Unlike products illegally marketed to children (e.g., tobacco and alcohol), or products for which an industry consensus has been reached against marketing to children (e.g., T rated videogames, or products labeled to be kept from kids for safety reasons), no community consensus has yet developed or legal requirements imposed that limits the appropriateness of marketing particular food products to children. Perhaps this can be explained by the fact that food products are not *inherently* dangerous or inappropriate—all foods may be safely incorporated into a balanced diet.

CARU *Guidelines* do assure, however, that presentations of food products do not mislead children. The *Guidelines* specifically address food issues from a number of different directions. They provide as follows;

“7. The amount of product featured should be within reasonable levels for the situation depicted. [i.e., no over-consumption]

“8. 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.

“9. Advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet.

“10. Snack foods should be clearly represented as such, and not as substitutes for meals.”

Of course, many of CARU’s *Guidelines* apply to all categories of products and we routinely monitor all ads for compliance with these as well. A few examples illustrating the application of CARU’s *Guidelines* to food advertising follow:

*Guideline: “Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to ... nutritional benefits.”*

Two advertisements for Kentucky Fried Chicken, one that truthfully stated that one breast contained “just 11 grams of carbs and packs 40 grams of protein,” and

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These closings did, however, represent the companies’ decision to adhere to the point of view initially expressed by CARU.

the other, that claimed, in part, that two of the chicken breasts have less fat than a specified fast food burger, were found to have the capacity to mislead children about the nutritional benefits of fried chicken, despite the fact that each commercial contained a super stating “Not a low sodium, low cholesterol food.” The advertiser discontinued the advertisements during children’s programming.

Guideline: *“The amount of product featured should be within reasonable levels for the situation depicted.”*

A commercial for Pringles showed four friends eating out of multiple six-serving containers of Pringles crisps. The advertiser agreed not to continue running the spot during children’s programming; a new child-directed commercial featuring a snack-sized container was inserted in its place.

Guideline: *“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.”*

A print advertisement for a Bagel Bites online auction sponsored by H.J. Heinz Company stated, “The more you scarf, the better your chances!” was considered to be in violation of section 8 of the Guidelines’ section entitled “Product Presentation and Claims.” The advertiser eliminated the quoted line.

Guideline: *“Comparative claims should be supported by appropriate and adequate substantiation.”*

Website advertising for Ferrero USA’s Nutella that truthfully compared the fat and sodium content of the advertised food with a similar food product, but which failed to compare the sugar content of each, was found to have the capacity to mislead children about the overall dietary benefits of the two products. The advertiser modified the advertisements.

A more comprehensive summary of CARU’s inquiries into food advertising since 1974 is contained in the “NARC White Paper: Guidance for Food Advertising Self-Regulation”, published in May, 2004, (attached), also available at <http://www.narcpartners.org/narcwhitepaper.aspx>

While CARU staff have developed considerable expertise over the years of administering the self-regulation program, CARU recognizes that professional expertise from individuals knowledgeable in the areas of education, communication, child mental health and nutrition is crucial to making informed decisions. Accordingly CARU consults with an Academic Advisory Board, composed of leading experts in these fields. Those experts assist CARU in the review and application of the *Guidelines*. And this is not just an abstract concept – when a particular ad raises questions about children’s perception, or cognitive ability to comprehend the message, for example, CARU staff consults members of the Academic Board for their expert advice in evaluating the advertising, before we open an inquiry.

Finally, to provide guidance to advertisers and demonstrate the effectiveness and ensure the transparency of the self-regulatory system, CARU issues press releases on all of its cases, and publishes its case decisions in the *NAD/CARU Case Reports*.

In sum, the self-regulation system has sought to help young children make wise food choices free of misleading and incomplete information, and to respect the right of marketers to promote honestly products that have not been determined to be inherently harmful.

The Commission notice of this workshop specifically invites comments on the possible role for third party self-regulatory groups like CARU in administering guidelines such as those proposed by the Center for Science in the Public Interest (CSPI). These proposals include several that address areas related to children's cognitive abilities comparable to some of the *CARU Guidelines*, although they extend the reach to children up to the age of 17. In addition, the proposal would bar the marketing of food products to children as so defined where the products are "low nutrition" as defined by CSPI. Quite apart from any considerations as to the wisdom of the CSPI proposals as a matter of public policy, something on which CARU does not express an opinion, there are some practical aspects to the CSPI proposal that would need close examination by any would-be implementer.

First, extending the reach of such guidelines to individuals through age seventeen would likely result in virtually *all* media falling within their ambit. Primetime, sports and late night programming all have a significant teen and young adult audience composition, and it is difficult to imagine how one could practically limit web sites and magazines from the universe of potential self-regulatory review with such an expansive definition of children. By contrast, as discussed earlier, children's media is relatively easy to identify.

A second consideration is the enormous effort and resources that would be required for the review not just of advertising, but of the content of every food advertised to children. Further, under the CSPI recommendations, in some instances, such as restaurant or brand marketing, it is not just the advertised product that would require content review, but the entire brand or menu.

Implementing CSPI's suggestion that advertising for meals should show portion sizes representing "no more than one-third of the daily calorie requirements for the average child in the age range targeted by the marketing" would present additional problems. It would be virtually impossible to know what age range each individual advertisement was targeting. And, for an ad targeting children ages 5 through eleven, under the MyPyramid calorie level chart the recommended calorie level varies from 1200 (for a sedentary 5 year old) to 2200 (for an active 11-year old). Were the guidelines to be extended to individuals through the age of 17, that upper range would be 3200. It's hard to see how an average of such disparate portion sizes would give useful guidance.

In short, whether CARU or any other organization were to apply guidelines such as recommended by CSPI, that organization would need to carefully assess the feasibility of the entire undertaking and the likely benefits of such a commitment.

Chairman Majoras and many others have wisely noted that there is no one clear cause to which the rise in childhood obesity can be attributed. Through aggressive and effective monitoring of child-directed advertising in all media, CARU has been highly successful in helping industry communicate responsibly to children, taking full account of their cognitive abilities. CARU appreciates the opportunity to explore the ways in which we can all be part of the solution.

Sincerely,

Elizabeth Lascoutx  
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