July 29, 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:

Consumers Union, nonprofit publisher of *Consumer Reports*, respectfully submits the following comments on the FTC/DHHS Food Marketing to Kids Workshop. Consumers Union is an independent, nonprofit testing and information organization serving only consumers. We are a comprehensive source of unbiased advice about products and services, personal finance, health, nutrition, and other consumer concerns. Since 1936, our mission has been to test products, inform the public, and protect consumers. We appreciate that the FTC is taking a serious look at the urgent public health problem of childhood obesity and the role marketing plays in it.

Children as a Marketing Target and Consumer Group

Each year the food industry spends approximately $12 billion marketing to children. Because corporations are established to financially benefit their shareholders, the $12 billion is a strategic investment aimed at bringing in a great deal more revenue for companies. With profit in mind, through advertising, the market is creating demand in young consumers and then fulfilling it with products that are not necessarily healthful.

More than ever children have the ability to significantly affect corporate profit margins. Societal changes have lead to children becoming consumers at a very young age. American children, ages five to fourteen, spend $20 billion each year.[1] Almost 75 percent of seven to nine year olds make an average of two independent trips to the store each week and a typical ten year old averages five visits each week to five different stores, representing 250 store visits each year.[2] These children (ages four through twelve) had access to $31.3 billion in 1999 from allowances, jobs and gifts and they spent 92 percent of it.[3]

At the same time, children influence family consumer decisions that in the past were made primarily by parents. On average children influence an estimated 17 percent of family spending in sixty-two product categories with child-influenced food decisions topping $67 billion.[4] This increased influence is partially due to the radical change in family structure that has occurred in recent years. In families with one bread winner and one parent at home with the children, parents may exert more authority and influence. In today's families with single, divorced and working parents, children have more influence and parents are relying on their children more when it comes to decision making. A recent survey confirms this, indicating that nearly 50 percent of parents believe that meal and grocery choices and restaurant selection are influenced by their children. When asked to describe the barriers

[1] Brownell, Kelly D. and Horgen, Katherine Battle, Food Fight, (Contemporary Books, 2004), p101, citing Vaeth E. Fast-food Restaurants Aim Ad Dollars at Kiddie Market. *Atlanta Business Chronicle,* Oct. 20, 1997.
[2] Kraak, Vivica and Pelletier, David L., The Influence of Commercialism on the Food Purchasing Behavior of Children and Teenage Youth, *Family Economics and Nutrition Review*, p17, 1998.
[3] Brownell, Kelly D. et al., op cit., p102, citing Campbell K, Davis-Packard K. How ads get kids to say, "I want it!" *Christian Science Monitor,* p1, Sep. 18, 2000.
[4] Kraak, Vivica et al., op. cit., p18.

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that interfere with their family changing to a healthful diet, parents identified two: varying food preference of family members and children's desire to eat advertised foods.[5]

Methods of Marketing to Children and Youth

These changes in our society have made it easier for companies to use marketing that undermine the authority of parents and persuade children that they need certain products by directly feeding into their fears and desires. Marketing to children starts from the time the child is born and continues as he or she grows. "At six months of age, the same time they are imitating simple sounds like 'mama', babies are forming mental images of corporate logos and mascots."[6] Baby bottles with popular soft drink logos are marketed on shelves along with a host of baby products (clothes, mobiles, crib toys and diapers) that feature brand logos or licensed media characters. This type of marketing helps ensure that babies will recognize and request similarly adorned products as they grow.[7]

Because of the brand associations formed early in life, it is easy for food companies to use the child's admiration for popular media characters for their commercial benefit. It has become common practice for food companies to partner with TV and movie companies in marketing generally unhealthful food products.[8] These partnerships are promoted with product packaging, sweepstakes and contests, product placement in children's movies and through toys and games. Television continues to be an important advertising medium. Children view between 20,000 and 40,000 commercials each year and food is the product advertised in more than half of all ads targeting children. This comes to an average of one food ad every five minutes of TV viewing time.[9]

The internet is another growing medium for promoting food products to children. For instance, *Nabisco* is a company that sells cookies and crackers and is owned by *KraftFoods,* the largest food company in North America. The Nabisco.com website is aimed entirely at children. The name of the site is "Nabiscoworld" and it provides over 50 free games for kids to play and a number of promotions offering a variety of prizes. Each game is "brought to you by…" a different Nabisco cookie or cracker. The website for M&M's candies contains eleven games featuring M&M candies doing human activities. In constant view on the screen is a link titled "Chocolate Empire" with M&M candies dressed as characters from Star Wars. These types of websites are likely effective in holding the attention of a child longer than a short TV commercial.

Creating Demand For Unhealthful Products

The diet that is advertised to children 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"[10] In one study fifty-seven percent of commercials aired during Saturday morning hours (when there is high viewing by children) were for foods and beverages of dubious nutritional value. Not a single commercial was for fruits or vegetables, bread or fish.[11] This explains why food accounts for over fifty-four percent of total

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[5] Kraak, Vivica et al., op. cit., pp17-18.
[6] McNeal, J.U. and Yeh, C.H., Born to Shop, *American Demographics* (1993), pp34-39.
[7] Hood, D., Is advertising to kids wrong? Marketers respond. *Kidscreen,* November 15, 2000.
[8] See list of TV and movie companies and the food products that they partner with *at* Brownell, Kelly D. et al., op. cit, pp108-109. The list is almost exclusively snack foods, high sugar cereals, juice drinks, packaged foods and candy.
[9] Samuels, Sarah E., Craypo, Lisa, Dorfman, Lori, Purciel, Marnie and Standish, Marion B. "Food and Beverage Industry Practices Aimed at Children: Developing Strategies for Preventing Obesity and Diabetes", *The California Endowment* (2003), p7. Can be found at: http://www.calendow.org/reference/publications/pdf/disparities/FOODANDBEVERAGEINDUSTRYMARKETINGPRACTICES3-04.pdf (last visited on July 28, 2005).
[10] Kelley, Ben, "Industry Control Over Food Marketing To Young Children: Are They Effective?" *The Public Health Advocacy Institute* (2005), p15. Can be found at: http://www.phaionline.org/downloads/caru.analysis.pdf (last visited on July 28, 2005).
[11] Nestle, Marion, Food Politics, (University of California Press, 2002), p181.

requests made by children and why ninety-four percent of such requests are for snack foods, candy, cereal and fast foods.[12]

Commercial pressures naturally promote continual consumption and acquisition at the expense of informed consumer decision-making. It is well established that children have not yet developed the necessary consumer decision-making skills and are, therefore, more likely to make unhealthful purchases. Research shows that this is clearly happening. In a study looking at what kids purchase with their own money, fifty percent of children reported buying foods and beverages. Half of that group chose candy, more than one-third chose soft drinks and ice cream, and about one-fourth bought fast food and salty snacks. [13]

Though incontrovertible proof does not exist that food advertising is causing children to become obese, we can be sure that it is persuading them to purchase the food that is being advertised. That is the intent of the advertising. We know that such food is generally low in nutritional value and that children spend their money on this food. The processed food industry naturally capitalizes on this fact and in turn we have a generation of children that are eating more frequently, getting a greater proportion of their nutrient intake from snacks, eating more meals away from home, and consuming more fast food.[14] It is clear that parental teachings about healthy eating are being drowned out by messages from advertisers.

Current Strategies

5 A Day

The *5 A Day* campaign is a program that seeks to increase the number of daily servings of fruits and vegetables Americans eat to five or more. The campaign started after a pilot project was conducted in California in the late-1980's during which fruit and vegetable consumption increased.[15] The national *5 A Day* campaign is jointly funded by taxpayer-supported National Cancer Institute (NCI) and the industry-funded Produce for Better Health Foundation (PBH). The original intended benefits of this program were twofold. First, it was meant to improve people's health by encouraging better eating habits. Second, increased produce consumption in turn would promote the fruit and vegetable industry.

Unfortunately funding for the *5 A Day* campaign has paled in comparison to the money spent marketing foods of low nutritional value. From 1993 to 1999 NCI funding ranged from a high of $6.2 million to a low of $4.3 million. In comparison the advertising budget for soft drinks in 1998 was $115.5 million, for candy bars it was $10-15 million and McDonald's alone spent over $1 billion.[16] To make matters worse, at one point the national *5 A Day* campaign decided to spend over 80% of its funding each year on research and evaluation with minimal investment in outreach and education.[17]

The *5 A Day* campaign does not have the money to engage in a massive public relations campaign, bombard children with TV commercials, conduct contests and sweepstakes nor partner with high profile children's movies. The tax-supported NCI does not have the financial capability to participate in expensive promotional partnerships with popular media outlets and the produce industry does not seem to have the same incentives as food producers to invest a large amount of money in the *5 A Day* campaign. Unfortunately, as currently structured and funded, the *5 A Day* campaign cannot compete with the food industry to win the minds of our nation's children.

Industry-Wide Self-Regulation

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[12] Kraak, Vivica et al., op. cit., p19.
[13] Nestle, Marion, op. cit., p178, citing J. Pollack, *Advertising Age,* March 1, 1999:16.
[14] Kraak, Vivica et al., op. cit., p15.
[15] Nestle, Marion, op. cit., p130.
[16] Brownell, Kelly D. et al., op. cit., p101.
[17] Nestle, Marion, op. cit., p131.

The current self-regulatory system maintained by the Children's Advertising Review Unit (CARU) has been ineffective in controlling the market drift toward inundating children with advertising to sell food with little nutritional value. CARU was created 30 years ago as an unabashed way for the industry to avoid being regulated by the FTC, in the face of the agency's legitimate concerns about the effect of advertising on children's health. It is very clear that these concerns have only multiplied in spite of CARU's supposed oversight. A number of necessary elements must be present for oversight to be effective. The CARU system is lacking these essential characteristics and has proven itself to be a poor substitute for regulatory oversight by the FTC.

A primary element of an effective regulatory system is *legal authority*. The CARU system has no legal authority to sanction companies that violate established guidelines. Without commercially significant sanctions, a company will not feel the financial effect from their improper action and will therefore have little or no incentive to change their ways.

Another important aspect of an effective regulatory model is that operation and control of oversight needs to be *independent and separate* from the industry under scrutiny. CARU gets funding from about 50 supporters. At least one-third of the supporters are food companies that sell products with low nutritional value, such as Pepsico, Sunny Delight, Frito-Lay, Burger King, Nestle and McDonald's. CARU also has an advisory board half of whose members come from these same companies. Even reviews of advertising complaints are conducted by industry members or industry-funded staff.[18] The problem lies in the fact that these companies have a fiduciary duty to their shareholders to make a profit. This duty may seem at odds with limiting the use of successful advertising strategies for the sake of the public good. The fact that children's health and welfare is not mentioned as a stated goal of this self-regulatory body confirms this inherent conflict.[19]

A related problem with CARU is the lack of *stakeholder input and public involvement* in the process. The CARU advisory board is made up solely of industry members and academic advisors some of which have consulted with advertising companies and major corporations.[20] This is despite the fact that one of the stated goals of the current self-regulatory system is to "increase public trust in advertising".[21] How can the public trust that its interests are being considered if there is no public representation on the governing board? It is for the public good that the FTC has sought broad stakeholder input on this issue. The public is the intended beneficiary of the decisions any oversight body would arrive at regarding advertisements to children. It, therefore, is natural that the public should participate in establishing principles and guidelines for the regulatory body to follow.

An effective regulatory system requires *public accountability* and a *well publicized complaints procedure*. CARU is ineffective because it is invisible and therefore, "while most authorities have mechanisms for receiving consumer complaints, CARU relies almost exclusively on internal monitoring and reviews." [22] The organization does not promote itself to the public or solicit complaints. Its complaint procedure is technically open to the public but is buried within its policies and procedures document. The fact that this document is available on the CARU website is irrelevant because there is little public knowledge that the organization even exists.

Effective oversight of a massive industry requires *adequate funding and staff*. CARU is severely lacking in this department with an annual budget of $650,000 to combat the $15 billion worth of promotions aimed at kids each year. [23] An estimated 4 percent of children's commercials each week violate the CARU guidelines, yet the

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[18] Kelley, Ben , op. cit., p8.
[19] The stated goals of the current self-regulatory system are: 1) Increase public trust in advertising, 2) Maintain a level playing field for settling disputes among competing advertisers and 3) minimize the need for government involvement in the advertising business. See "White Paper: *Guidance for Food Advertising Self-Regulation",* published by the National Advertising Review Council, (2004), p10.
[20] Mayer, Caroline E., "Minding Nemo, Pitches to Kids Feed Debate about Watchdog", *The Washington Post*, February 27, 2005, Page F01.
[21] White Paper: *Guidance for Food Advertising Self-Regulation,* published by the National Advertising Review Council (2004), p10.
[22] Hawkes, Corinna, Marketing Food to Children: The Global Regulatory Environment, *World Health Organization Publications* (2004), p17.
[23] Mayer, Caroline E., op. cit.

organization has averaged only bringing fifteen cases per year.[24] For the regulatory system to be anything more than superficial, sufficient funding is required to thoroughly investigate, analyze and bring action against the thousands of ads that likely violate existing standards.

Finally, an adequate regulatory system must be *regularly updated and reviewed*. Though CARU's website claims that CARU reviews its guidelines each year, the latest posted changes are from December 2002. Considering the pace of technology, CARU doesn't seem to be keeping up. Advergaming, a popular advertising strategy that incorporates brand-named products with free online games, is not even mentioned in the CARU guidelines. CARU has spent its tenure mainly focusing on television ads. This is not adequate because, "the cumulative effect of other forms of promotion and marketing is likely to be significantly greater."[25]

Proposed Strategies

In our free market economy, for-profit corporations including food processors exist to make a profit. To further that end, various industries inundate consumers with messages aimed at persuading them to purchase particular products. As a counterbalance, our governmental system creates safeguards to ensure protection of values our society holds dear, but which unbridled market forces would not prioritize. This is government's traditional role to protect health and safety. Certainly children's well being and public health are classic categories for which governmental intervention is appropriate. Given the failed self-regulatory scheme for advertising to children and the dire state of children's health- with obesity, diabetes and heart disease reaching unprecedented levels and disproportionately affecting children of color- the federal government needs to exercise its power.

For any type of regulation to be effective, the characteristics discussed previously must be present. Because food companies cannot, in order to optimize children's health, be expected to forgo their duty to shareholders to make a profit, government intervention is necessary. As Senator Harkin recently noted,

> "In this way, our free market creates a situation in which private interests conflict with the public good. These are the times when the government has a responsibility to act. Where corporate responsibility is absent, federal regulations of food marketing directed at kids are necessary." [26]

Consumers Union, therefore, recommends that the FTC initiate a formal public regulatory process seeking participation by all stakeholders. The goal of this process should be to develop guidelines and enforceable regulations that will instruct industry action with respect to children's advertising. Consumers Union supports the *Guidelines for Responsible Marketing to Children*[27] proposed by the Center for Science in the Public Interest and believes they should form the base from which to work with in creating a more enforceable scheme. In addition, the current CARU guidelines and those from other interest groups should be considered.

Consumers Union believes that the government has a key role to play in providing effective oversight of children's advertising. In the 1970s, the FTC had valid concerns about children's health; thirty years later, children's health in our country is reaching critical condition. The current self-regulatory model is clearly not working and it is time to formally re-address this issue of government intervention.

Consumers Union welcomes the FTC's efforts on this important public health issue.

Sincerely,

Elizabeth Imholz, Director

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[24] Kelley, Ben, op. cit., p6.
[25] Kelley, Ben, op. cit., p16.
[26] Senator Tom Harkin, Address to the FTC Workshop on Advertising to Children (July 14, 2005).
[27] Center for Science in the Public Interest, *Guidelines for Responsible Marketing to Children* (January 2005), *at* http://cspinet.org/marketingguidelines.pdf (last visited July 28, 2005).

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