

September 15, 2005

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

Mr. C. Manly Molpus
President and Chief Executive Officer
Grocery Manufacturers Association
2401 Pennsylvania Avenue, NW, 2nd Floor
Washington, DC 20037

RE: Food Marketing to Kids Workshop - Comment, Project No. PO34519

Dear Messrs. Clark and Molpus:

The National Advertising Review Council (NARC) would like to offer further comment regarding the Federal Trade Commission (FTC) and Health and Human Services (HHS) Workshop on Marketing, Self-Regulation and Childhood Obesity. This letter will provide an update on certain works in progress to reinforce and improve the children's advertising review program, administered by the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB). In doing so, it will address the positive suggestions presented by the Grocery Manufacturers Association (GMA) during the Workshop on behalf of a number of its member companies, and made part of the Workshop record.

Policies for CARU are set by NARC, relying on the practical experience of industry advertising experts and the self-regulatory experience of the CBBB. We are pleased to have been offered the opportunity to participate in the Workshop and to be able to present CARU's record of effectiveness in maintaining a robust, independent and transparent system of self-regulation that has been in place for more than 30 years. We applaud the industry for its compliance rate of more than 95 percent with CARU decisions. We welcome the continued and increased support to which the food industry is committed.

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*), many of which impose limitations far beyond those imposed by any law or regulation. CARU was created to ensure that advertising directed to children is truthful, accurate, and appropriate for its intended audience. It is important to recognize that CARU was not established to be the arbiter of which products should or should not be manufactured, sold, or marketed to children, or to tell parents or children which products they should or shouldn't buy.

Within CARU's mandate, summarized below are some key initiatives being undertaken by CARU, with the support of NARC, to address issues raised at the Workshop.

Improve Direct Consumer Access

CARU has recently established a complaint form on its Website that facilitates receipt of consumer complaints and other contacts with CARU regarding traditional or online media. In addition to the easily accessed complaint form, CARU is at or near the top of the list when one conducts an Internet search on Google, Yahoo! or AltaVista for "children's advertising" or "complain about advertising to children." To make CARU even more broadly visible and accessible to consumers, the CBBB has created a link to the "File a Complaint" pages of the more than 100 Better Business Bureaus as well as BBBOnline, which may be accessed through the BBB's main Website, www.bbb.org. The Websites which link to the complaint system attract over 20 million visitors annually. The complaint pages themselves generate over 200,000 visits.

In addition to the visibility afforded through the BBB's Website, the other three NARC partners -the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA) and the American Advertising Federation (AAF) - have agreed to provide links to CARU's Website. The CARU Website already has links from industry associations including the GMA, the Toy Industry Association (TIA) and the American Bar Association (ABA). SEARCH: The National Consortium for Justice Information and Statistics, an organization formed by the 50 states' governors to provide quality information on new technology to statewide law enforcement agencies, links to CARU. Additionally, there are links to CARU from law schools and universities in several states and in Canada. We will encourage additional industry, educational and public-interest organization links.

Our goal is to ensure an accessible, user-friendly CARU complaint process that will constantly expand and allow CARU to gather as much relevant information as possible about the claims, time, place, and medium involved in an advertisement. This online complaint procedure (in addition to postal mail and telephone services) is predicated on successful experiences acquired through the BBB system as well as the U.K. and Canadian self-regulatory systems. After full implementation, we will evaluate the effectiveness of the system and the need to consider (or expand to include) other potential systems including, if appropriate, a toll-free number.

Improve Transparency

Transparency is a key attribute for an effective self-regulatory system. Accordingly, CARU and the National Advertising Division (NAD) of the CBBB publish their decisions. National self-regulation is not a confidential mediation or arbitration procedure. CARU's press releases describing its case decisions have always been made available free to all upon request and, since its Website was launched, through its Website. The press releases are transmitted immediately to a press distribution list, which is provided access to the entire case decision as well. Earlier this year, NARC created and filled the position of director of communications to help heighten CARU's public profile.

For several years, CARU and NAD have expanded access to their work through a subscription system that provides an online searchable and printable database of CARU and NAD case decisions. The archive includes all cases opened by CARU and NAD and is searchable by advertiser, brand, product category, chronologically and by date range.

Although members of the general public have been able to obtain individual case decisions free upon request, we recognize that we may be able to ease access, particularly for non-profit organizations that may have a need for decisions on more than a case-by-case basis. Accordingly, NARC is in the process of developing a system by which the public, as well as bona fide public-interest and educational institutions, can more easily access the existing archive of cases through a free subscription. Additionally, once developed, NARC will announce the availability of these archives and will also contact educational, consumer, and parent community groups who might have an interest in these archives.

Broadened Involvement and Advice to CARU on Matters of Children's Health

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. It was with this in mind that CBBB established CARU and NARC brought it under the umbrella of the existing, successful advertising self-regulation program it sponsored. CARU was established 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.

CARU recognizes that professional expertise from individuals knowledgeable in the areas of education, communication, child mental health and nutrition is crucial. Accordingly, CARU consults with its Academic Advisory Board, composed of leading experts in these fields. These experts assist CARU in the review and application of the *Guidelines*. When a particular ad raises questions about children's perception or cognitive ability to comprehend the message, for example, CARU staff seeks the expert advice of the Academic Advisory Board before opening an inquiry. In the past year, CARU has expanded the board, adding two nutritionists to the already-included experts in child psychiatry, developmental psychology and childhood communications.

With NARC's encouragement and CBBB's support, CARU will continue to expand this group to provide broader input and access to experts who will help guide its decisions. Further, NARC has approved policy changes that will increase the transparency of the program by making any expert opinion relied upon by CARU available to the advertiser and complainants in that case.

NARC is also asking CARU to broaden and enhance its industry support advisory group so that it is inclusive to represent all CARU Supporters. Along with the academic and other experts, this group will better provide valuable insight on children's advertising issues and trends pertinent to the self-regulation program.

It is not the goal or focus of self regulation to provide the industry with specific programs or approaches addressing health issues. In fact, the Advertising Council, supported and funded in part by the trade association members of NARC, has developed programs to help advertisers develop approaches that encourage constructive and consistent healthy lifestyle messages and, when appropriate, we offer the Ad Council NARC's support.

Strengthen Voluntary Pre-Dissemination Review of Ads

Pre-screening of all forms of advertising has long been available as a benefit to CARU Supporters. We agree that this process may help prevent advertising inconsistent with CARU *Guidelines* from reaching the marketplace, but the use of this service is, and will remain,

voluntary. NARC has, however, asked CARU to expand this opportunity to pre-screen and, accordingly, CARU will make its voluntary pre-screening process available to non-Supporters at a reasonable fee.

We appreciate and welcome the GMA and its members encouraging greater awareness of this voluntary pre-screening opportunity for both CARU Supporters and non-Supporters.

Ensure CARU's Guidelines Address Certain Marketing Practices

- *Expand CARU's Guidelines to address advertising contained in commercial computer games, video games and interactive Websites*

CARU's *Guidelines*, as currently applied, do address advertising to children on interactive Websites and CARU routinely reviews these Websites.

Further, CARU has appointed a task force to explore the extent to which new forms of online offerings are included within the self-regulation system's definition of "national advertising," or if not, whether they should be. The task force has been asked to report back to CARU in mid-September. Upon receipt of that report, CARU will prepare a recommendation to the NARC Board for final approval and possible revision of the *Guidelines*.

CARU is also exploring efficient ways to monitor advertising addressed to children on computer and video games.

- *Prohibit paid product placement on children's programming*

CARU is unaware of any current paid product placement in children's television programming, as defined by CARU. However, in order to ensure that its approach to this issue is the appropriate one, NARC has asked CARU to form a task force to determine whether children's programming contains product placement, and if so, whether disclosures or any other approach would be meaningful to children.

- *Appropriate use of third-party licensed characters in advertising*

CARU currently applies its *Guidelines* to all advertising directed to children, including advertising utilizing licensed characters. The *Guidelines* specifically prohibit "host selling" situations. Host selling occurs when a live or animated personality is used to sell products or services in, or adjacent to, programs primarily directed to children in which the same personality or character appears.

Because broader issues suggested by the GMA letter would impact a number of industry segments and constituents whose input is valuable and necessary for further NARC consideration, we will initiate discussion to gather that input.

Build a Closer Relationship With the FTC and HHS

NARC and CARU have long enjoyed a strong relationship with FTC, as have NAD and the Electronic Retailing Self-Regulation Program (ERSP). NARC agrees that these relationships should be enhanced and extended to HHS. To that end, in addition to our regular ongoing contacts, we would like to renew a practice of the self-regulation system that hasn't been used in recent years: an annual formal NARC briefing to the FTC on current issues, cases and trends.

This briefing will be provided by the NARC partners to all FTC commissioners, and NARC will work to arrange a similar relationship with HHS.

We look forward to working with the GMA and the rest of the children's advertising industry to enhance the current process, public awareness and public confidence in the self-regulatory system.

Cordially,

James R. Guthrie
President and CEO
National Advertising Review Council

cc: NARC Board
CARU Supporters