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May 18, 2007

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Food Industry Marketing to Children Report: Paperwork Comment
FTC File No. P064504

Dear Secretary Clark,

The Rudd Center's mission is to improve the world's diet, prevent obesity, and reduce weight stigma by establishing connections between science and public policy, developing targeted research, encouraging frank dialogue among key constituents, and expressing a dedicated commitment to real change. We are encouraged by increased interest in the food industry's marketing activities and expenditures targeted to children and adolescents and are pleased to offer Comment to the Federal Trade Commission ("FTC") to facilitate its preparation of the report.

The available scientific evidence suggests that the food and beverage marketing promotes brand loyalty, the desires to purchase advertised products, and increased consumption of nutritionally deficient items.[1] It is the case, however, that establishing cause and effect relationships between marketing, food consumption, and issues such as childhood obesity and diabetes has been a challenge because: a) industry's budget for determining the impact of marketing dwarfs that of the scientific community; b) rapid advances in marketing approaches (i.e., product placements, digital marketing) make it difficult for science to keep pace; and c) insufficient research has been done on key issues such as marketing targeted to specific ethnic groups. It is widely accepted that more information is needed.[2] The FTC proposal to compel the production of data and information from industry offers hope of developing the foundation from which public policy can be developed.

In the first round of comments, one commentator suggested using third-party data collection firms rather than compel information from industry. Such third party information is likely to be helpful and informative, but by itself will offer an incomplete picture. Individual companies have a great deal of proprietary information pertinent to the stated aim of the Senate request, which is unavailable to third parties.[3] In addition, third party firms tend to collect information on traditional forms of marketing such as television advertising but not newer approaches such as digital marketing, use of company websites for "advergaming," etc. The FTC can provide the

Senate with an accurate estimate of marketing expenditures only by including figures from industry. Should future regulation result from the present inquiry, it is important that it be based on a complete picture of marketing expenditures, the exposure of various population groups, and the impact on child nutrition. This information is critically important given industry's claim that self-regulation through the Children's Advertising Review Unit is sufficient to protect children. Additionally, the information sought by the FTC could provide a valuable baseline against which to judge future changes in marketing practices.

The Senate Report specified certain criteria for the FTC to include in its report on marketing and expenditures targeted to youth.[4] We agree with the FTC that in order to gain a complete picture of the relevant activities, it is essential for the Commission to collect data and information according to its elaboration of the proposed Section 6(b) Orders in the April 18, 2007 Notice in the Federal Register.[5] We emphasize again that more modern marketing techniques such as those found in schools and on school campuses, through celebrity endorsements, sponsorship of sports teams, and character licensing may be even more relevant to understanding the effects of marketing on children than some of the traditional strategies listed by the Senate. We therefore urge the FTC to make information available to the public regarding all 20 media categories it proposes.

Understanding marketing expenditures will be helpful, but determining the impact of food marketing on children is the key issue. Because industry controls much of the relevant data, it can perform market research into the impact of its campaigns on the purchasing and consumption patterns of children and adolescents. FTC's data collection from industry will be most meaningful and have the greatest potential to produce positive outcomes (e.g., improved public health) if the compelled information includes all market research and studies pertinent to how marketing affects the purchasing and food consumption of parents and children. These data may be generated by industry members themselves or by third-party firms that specialize in this area and are relied on by companies to help with marketing strategy.[6]

We believe an unjustifiable distinction has been made by industry between advertising and in-store marketing directed at the shopper (parents) versus that directed at those accompanying them (children). If research and expenditures are recorded by industry as being directed to adults, even though the intended consumers are children, this activity must be included in the composite picture being developed by the FTC. In order to provide a clear and accurate response to the FTC's request, companies should be asked to provide data on marketing of products where children are an intended target or are significant end users.

We support the FTC's elaboration of the information it will seek and the breakdown of reporting requirements in the proposed Section 6(b) Orders in the April 18, 2007 Notice in the Federal Register. We urge the FTC to report the information to the public in this format as well. With regard to race and ethnicity, research shows that there are differences among the groups in access to healthy foods,[7] media use,[8] computer use,[9] and obesity rates.[10] However, much less is known by non-industry researchers about how marketers target different racial or ethnic groups.[11] Given the vulnerability of certain demographic groups to obesity and diseases such as diabetes, this information may be important to the task of reducing health disparities.

Commentators have referenced concern over infringement of the First Amendment if regulations were to result from the current inquiry. Legal scholarship in the area of commercial speech supports the view that there are ways to regulate advertising to children without implicating the First Amendment.

We are firmly committed to devising ways to improve the nutrition of America's children and in so doing, prevent childhood obesity. Addressing the impact of commercial speech is likely to be a key effort the nation might undertake in this regard. The present inquiry could assist the government and other stakeholders in understanding the facts and facilitate constructive discussions.

We appreciate the opportunity to comment on this important issue.

Respectfully Submitted,

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[1] Brownell, K.D., *Food Fight*, McGraw-Hill, New York; 2004: 99, 106.
[2] Institute of Medicine ("IOM"), *Food Marketing to Children and Youth*, The National Academies Press, Washington, DC; 2006:34.
[3] IOM, *Food Marketing to Children and Youth*, supra, at 34.
[4] *See* Senate Report No. 109-88 (2005) ("The report should include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.").
[5] *See* Federal Register Vol. 72, No. 74, Notices (4/18/07), p. 19510, fn. 19 ("Television advertising; radio advertising; print advertising; movie theater/video/video game advertising; company-sponsored Internet sites; other Internet advertising; other digital advertising; in-store advertising and promotions; specialty item or premium distribution; public entertainment events; product placements; character licensing and cross-promotions; sponsorship of sports teams or individual athletes; packaging and labeling; word-of-mouth marketing; viral marketing; celebrity

endorsements; in-school marketing; advertising in conjunction with philanthropic endeavors; and other expenditures.”).

[6] *See e.g*., Kid Power Xchange at http://www.kidpowerx.com/cgi-bin/templates/single.html?topic=445 (accessed May 7, 2007) and Kidscreen at http://www.kidscreen.com/ (accessed May 7, 2007). Both of these groups also have conferences for industry members on the subject. See http://www.kidpowerx.com/cgi-bin/templates/genevent.html?topic=445&event=12748 (**“**Don’t miss this opportunity to hear first hand what works in the kids’ and tweens’ space!”) (accessed May 7, 2007) and http://www.kidscreenwest.com/2007/?_c=1 (“Join key stakeholders in consumer products & marketing to discuss best practices, trends and issues shaping the kids consumer marketplace.”) (accessed May 7, 2007).

[7] Powell, LM, Slater, S, Mirtcheva, D, Bao, Y, Chaloupka, FJ. Food store availability and neighborhood characteristics in the United States, *Preventative Medicine* 2007;44(3):189-195; Morland K, Wing S, Diez Roux A, Poole C. Neighborhood characteristics associated with the location of food stores and food service places. *American Journal of Preventative Medicine* 2002;22(1): 23-29.

[8] *See* IOM, *Food Marketing to Children and Youth*, supra, at 178 (citing studies).

[9] *See* IOM, *Food Marketing to Children and Youth*, supra, at 177 (citing studies).

[10] *See* The National Health and Nutrition Examination Survey (NHANES) by the Centers for Disease Control, National Center for Health Statistics (1999-2002): Survey Results available at: http://www.cdc.gov/nchs/nhanes.htm.

[11] IOM, *Food Marketing to Children and Youth*, supra, at 141 (“The committee was not able to find available evidence to assess whether market segmentation has been a significant influence on children’s food and beverage product development.”).