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FEDERAL TRADE COMMISSION

SIZING UP FOOD MARKETING AND CHILDHOOD OBESITY

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P R O C E E D I N G S

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MR. FENTONMILLER: If everyone could take a seat, we are going to begin shortly.

Good morning. Am I loud enough, can you hear me? I will project my voice until they adjust the volume accordingly.

Good morning, and welcome to the FTC's forum on sizing up food marketing and childhood obesity. My name is Keith Fentonmiller. I'm a senior attorney here at the Federal Trade Commission. Just a few quick procedures before we begin.

First, I'm required to make some security announcements. Keep your name tag on, the sticky pad that is, on at all times. If you leave the building for fresh air or a cup coffee or a bottle of 100 percent juice or skim milk, you will need to go through the magnetometer and x-ray machine again.

In the unlikely event of a fire or evacuation, please leave the building in an orderly fashion. We would proceed across New Jersey Avenue to the sidewalk area to the left of Georgetown Law Center, and if an emergency makes it unsafe to go outside, you will be told where to go inside the building.

In the case of suspicious activity, if you spot

it, please notify security, and that does not include smuggling in a flask of sugary soda.

Restrooms are through the FTC lobby, follow the signs or ask our security personnel for directions.

Cell phones, please be aware that the microphones are on all day, although apparently not very loud, so just make sure to preserve your privacy as best as possible, make calls in the lobby area or outside. Actually, now would be a good time to either turn off your cell phones or put them on vibrate.

For two of the panels today, the agenda calls for question and answers or comments from the audience. The staff will be walking up and down the aisles with portable microphones for that purpose. For people who are participating by the webcast, you can send your questions or comments by email to childhoodobesity@ftc.gov, and in case you didn't get that, that email address will be posted on one of the PowerPoint slides at the appropriate time. There should be some literature on the back tables in the outside lobby, for people who wanted to bring literature, it's there.

That's it as far as the housekeeping matters and it's my great honor to introduce the chairman of the Federal Trade Commission, John Leibowitz.

(Applause.)

CHAIRMAN LEIBOWITZ: Thank you so much. Good morning. What a thrill it is to see this kind of turn-out, as some of you may know, because I see you as sort of repeat offenders in the audience. This is our ninth, I think, day of workshops in the last three weeks and they have ranged from things like the future of news journalism to debt collection to merger guidelines and we're especially delighted to be able to welcome HHS Secretary Kathleen Sebelius as our keynote speaker, who is seated over here. If you could all give her a round of applause. We're not introducing you yet.

(Applause.)

CHAIRMAN LEIBOWITZ: Today, of course, we are going to discuss one of the most serious threats to the well-being of our children, and that's childhood obesity. As all of you know, childhood obesity is more than a social stigma, it has been an epidemic of alarming proportions. Obesity rates among children six to 11 have doubled since 1980, and since that time, they have more than tripled for teens 12 to 19. About one in five young people is now obese, a condition that puts those children or those teens at risk for heart disease, diabetes, osteoarthritis, and cancer. Indeed, physicians no longer use the term "adult onset diabetes"

anymore, because so many children are getting it. They now call it Type 2 diabetes.

This epidemic is affecting not only the quality of our children's lives, but also their life span. Sadly, this may be the first generation of American children with a shorter life expectancy than their parents.

Now, as many of you know, it's been more than four years since we held our first conference on food marketing and childhood obesity. The immediate response of the food and beverage industry to that workshop in 2005 was heartening. Several companies pledged to make changes to what and how they advertise to children. Others have followed since. We've seen, I think, some successes.

Soda consumption in our schools is down. President Clinton's Alliance For a Healthier Generation reports that calories from beverages shipped to schools has dropped about 41 percent. As an LA Times story this morning noted, Kraft has actually stopped advertising Chips Ahoy and Oreos, although I still saw my daughter sneaking a few Oreos last night at around 10:30. That's another story. That was a joke, it was a bad joke, but I guess it's early in the morning.

These changes, as we all know, have, however,

come in small increments. Obesity rates and obesity-related problems continue to grow, and we really have to do better.

Today we are calling on the food industry to tackle this threat and boldly re-invent the food marketplace. Whether or not you are part of the problem, you need to be part of the solution. Put simply, it is time for industry to supersize it's efforts.

Now, we had all hoped that the progress thus far had been more substantial and apparent. Instead, the Rudd Center at Yale University reported this fall that cereals marketed to children contain 85 percent more sugar, 65 percent less fiber and 60 percent more sodium than adult cereals. These numbers, of course, put bluntly, are very disturbing, and hopefully General Mills won't be the only company to respond, as they did last week by cutting the sugar content of many of their kids brands.

Children's diets are still far from balanced. Potato chips and french fries account for more than half of all vegetables consumed by children, and despite the progress made in schools, the majority of teens are drinking the equivalent of 39 pounds of sugar each year from soda and other sugar-sweetened beverages. Just

think of it.

We all realize that marketing is just one of the many influences on children's diets, and as a parent, I can appreciate that getting children to eat better is no easy task. That's why we really need the industry's help.

As you know, the FTC looked at the children's food marketplace in 2006, just as industry, under the auspices of the Better Business Bureau, was beginning to take its first self-regulatory steps, and I see Lee Peeler in the audience, who was instrumental, and maybe Elaine Kolish, in making that happening, so thank you.

Our comprehensive report on food marketing, a review of industry expenditures, set the benchmark for measuring industry's efforts. Our report also included a number of specific recommendations to address shortcomings in these efforts. Four in particular help frame our discussions today. First, the FTC called on all food and beverage companies to adhere to meaningful nutrition-based standards for foods marketed to children. To their credit, 16 have already signed CBBB pledges. Others have taken action on their own, but many companies that market heavily to children and teens have yet to join or make their own commitments.

Why, for instance, hasn't Yum! Brands, with its

KFC, Taco Bell and Pizza Hut chains, stepped up, or Chuck E. Cheese or IHOP, or the marketers of Airheads or Baby Bottle Pops.

Second, companies must change the nutrition loopholes, and we all know there are strategic ones that allow foods of questionable nutritional value to be marketed to children simply because they have somewhat less sugar, fat or salt than prior versions. Are slightly lower fat potato chips or slightly less sugary cookies really the foods we should be encouraging our children to eat? Every food marketer should play by the same set of rules. Otherwise those who lead may suffer harm from those who game the system to their competitive advantage. We need some self-regulatory standardization.

Third, these pledges should cover all forms of marketing to children. Not just traditional advertising, but also product packaging, in-store promotions, virtual marketing, and other techniques that are heavily used to reach children. If you are willing to limit your advertising, why not limit packaging, promotions, and other marketing in the same way?

Fourth, it's time for the entertainment industry to play a constructive role. It needs to filter the foods that are advertised on children's programming,

particularly on children's cable networks. At a Senate appropriations hearing last fall, and I was testifying at that hearing, Nickelodeon made this commitment to Senator Tom Harkin, and I quote, "Sir, if uniform standards are adopted, and they apply to all the industries we deal with, absolutely we will use them as a filter for all of our marketing and advertising relationships."

As you're going to hear this afternoon, we will have such a uniform framework in place, we expect, by this summer. We expect Viacom to honor its commitment and others to follow their lead.

We're also conducting a follow-up to our first study. We're going to examine whether the food and media industries have acted on our recommendations. We will soon be sending out 44 subpoenas to the largest food marketing companies to collect marketing data for 2009, when the pledges began to be implemented. We'll also assess whether the nutritional quality of children's foods have improved since 2006.

We continue to believe that the food industry and children's media are trying to affect positive change. Based on their response to date, we are hopeful that self-regulation can work, and that your efforts won't be falling short, but we can't simply congratulate

ourselves. Companies can't simply congratulate themselves for meeting their prejudices and be done with it. We need to be sure that the pledges are adequate to drive real changes in the marketplace and especially in children's diets.

Now, the FTC is very sensitive to the First Amendment principles that govern here. It has been one of the reasons we continue to encourage an industry-driven approach, but the stakes, really, they can't be higher. If action doesn't come from the private sector, there are many who will call for Congress to act, and there are many in Congress who will want to do so.

As almost everyone here today knows, the cost of inaction on our children's health, not to mention the economic costs of obesity, are significant. A report this year estimated that almost 10 percent of all medical spending is due to obesity, and if these trends continue, and I think we all hope that they will not, by the year 2018, that figure will rise to 21 percent.

The public opinion on childhood obesity and about the role of government should play has also shifted. For the first time, but my guess is not the last, an annual pole of parents' top ten health concerns ranked childhood obesity as number one. Ahead of

smoking, ahead of drug abuse.

Perhaps the strongest indicator of the shift in public sentiment comes from Congress, which is now calling on the FTC and other agencies to take a more active role, both in tracking industry progress and in developing nutrition standards for children's food marketing. From the President, who has called childhood obesity, and I quote, "A growing epidemic." Let's all keep this in mind, this new landscape as we go a forward on this issue and I hope we go forward collectively.

So, we are going to start the morning with a look at new research on food marketing to children. We know that marketing to children is more integrated and immersive than ever before. Children who used to spend 30 seconds watching a TV ad for their favorite cereal are now spending much, much longer on branded online game sites.

The Rudd Center, which is a treasure trove of information in this area, reports that every month on average, 767,000 young people each spend a total of 66 minutes engaged in General Mills' millsbury.com alone, and while online, avatars in these virtual worlds are quenching their virtual thirst with virtual cans of soda. One virtual brand sold 110,000 virtual cans of pop last year on a single site. So we look forward

really of learning the impact of what all this marketing is, other than having an increase, of course, in virtual weight.

I'm only as good as my material. But I wrote that myself, so you can blame me, not my staff.

Next, we'll have what promises to be both a scholarly and lively discussion of the First Amendment ramifications of restricting advertising to children, hosted by David Vladeck, the Bureau of Consumer Protection director and resident expert on commercial speech.

In the afternoon, we hope to have a constructive dialogue about the progress that the food and entertainment industry has made in reshaping the marketplace and in improving the nutritional profiles of food directed to children. Finally, we will be previewing the much anticipated nutritional standards being developed at Congress' behest by the Interagency Working Group on Food Marketed to Children, unofficially known by the acronym SNAC PAC, although when I try to work on the acronym, it comes out more like [IWGFMC].

We are going to open up the last panel for a town hall discussion, and we hope to hear very candid feedback, I'm sure we will, as the group works towards its July 2010 deadline on a report for Congress.

We have a packed agenda, so let's get started.

It's now my absolute delight and great honor to welcome the Secretary of Health and Human Services, Kathleen Sebelius, as our keynote speaker. Secretary Sebelius is in charge of one of the largest Federal Government departments, overseeing 80,000 employees and a myriad of agencies, including the Food & Drug Administration, the Centers for Disease Control and Prevention and the National Institutes of Health. She is the lead cabinet official on comprehensive health care reform, and we know she's going to be having a busy day and a busy week and shoulders the burden of responding to the H1N1 epidemic and doing so as well as anyone could ask for.

Despite these and many other responsibilities, she has managed to the put the weight of her office behind the battle of childhood obesity, and we've been fortunate to work extensively with Secretary Sebelius and her staff on many, many issues. For example, fighting against collusive pay for delayed pharmaceutical settlements where the brand name pharmaceutical company pays its generic competitors to stay out of the market, and once health care legislation passes, and I am confident it will, we are going to work with HHS to provide critical disclosures to consumers so

they can better compare competing health care plans.

We are pleased to continue a partnership that our two agencies really formed in 2005 at our first joint workshop on childhood obesity. We know that you care deeply about this subject, Madam Secretary, and under your leadership, HHS has worked with local school districts to find out how they're getting kids to eat healthier and be more active and you are spreading the word almost better than anyone can about the successful programs and the best practices. We're proud to be working alongside you to combat the scourge of childhood obesity, and with that, I will turn it over to secretary of HHS Kathleen Sebelius.

(Applause.)

SECRETARY SEBELIUS: Well, good morning, and thank you so much, Chairman Leibowitz, for that nice introduction. John has been a great advocate for consumers for lots of years, whether it's helping get affordable prescription medicines or protecting personal information or fighting predatory loans. So, I'm really delighted to have him as a partner on some of these incredibly important health issues and look forward to working with him.

I want to also, at the outset of my comments, acknowledge a couple of key members of the HHS

leadership team, two of whom you're going to hear from later today, Dr. Barbara Schneeman, from the Food & Drug Administration, and Dr. Bill Dietz, from the Centers for Disease Control and Prevention, and also Dr. Dora Hughes is with me this morning, and she's the counselor in our office who works on a myriad of issues, but particularly the kind of public health agenda and the FDA agenda is in her bailiwick.

Dr. Schneeman and Dr. Dietz are representing our department on the Interagency Working Group that the chairman has already referred to, and they will have some exciting updates for you later today. So, stick around for their session.

Finally, I just want to thank all of you for being here today. There's a wide range of folks in this room representing, I think, the wide range of interests who have been working collaboratively on this issue, from scientists to industry leaders to consumer advocates, and that's encouraging, because childhood obesity is an area that, while we've understood the health risks for quite some time, we really haven't acted on what we know in a very effective fashion, and I think the alarm bells need to sound, and we need to really step up our action plans.

We know where good ideas are, and we're looking

forward to working with you so we can really create a healthier future for all the children of America.

As the chairman said, we know that one in five American children are obese. More alarmingly, one in three American children are overweight or obese. So, we're talking about a third of the kids in this country who are really more and more out of step in terms of their health prospects.

Being overweight, as a kid, is now, we well know, associated with a wide range of problems, from high blood pressure to asthma to diabetes to depression. It's also directly the biggest link that will give a clue to whether or not that child will be overweight or obese as an adult. What happens during their childhood years. Adult obesity, again, is the underlying health risk for a host of diseases, heart disease, stroke, various kinds of cancers, it's the single biggest predictor of diabetes, and there's a huge cost with all of those illnesses to our economy.

Chronic diseases account for 75 percent of our health care dollars. Seventy-five cents of every dollar we spend on health care is spent on underlying chronic diseases, and it explains why the CDC estimates that obesity costs our health care system $150 billion a year, nearly twice what it was in 1998. So, in the last

ten years, we've actually doubled the health costs associated with just that one disease.

To put that in perspective, the American Cancer Society has totaled the health care expenditures in America on all cancers combined, all populations, all cancers, and it's about $100 billion a year. So, diabetes is now 50 percent more than all the cancers put together. That creates an enormous financial challenge, but there's another piece of it. This trend is getting worse, and not better. The share of our kids who are overweight is four times as high as it was 40 years ago.

Just to give you an anecdotal example, I'm going to highlight, again, what the chairman has already said, that no longer is the term "adult onset diabetes" even used in the medical community, there are just way too many kids, kids as young as eight and nine presenting with Type 2 diabetes. So, it no longer is a terminology that's even recognized.

Now, think about a different scenario. Think about one in three children in America being exposed to radiation, which we knew would cause serious cancers in the long-term, and we knew that more and more kids in every community in America were being exposed to that radiation day in and day out. I think alarm bells would be going off across America. There would be a huge

outcry and a demand that something be done immediately.

Unfortunately, we're dealing with a situation where sometimes the health impact doesn't present itself for ten or 15 or 20 years. So, it's a slow walk to a very dismal future. But we need to insert some urgency in this discussion.

The fact that many of the effects of childhood obesity don't show up for a while doesn't make them any less damaging. Americans are getting sick and paying higher medical bills, and in some cases, dying, because we didn't do enough to help them stay healthy when they were young, and that's simply unacceptable.

Now, the President is very interested and engaged in this issue, and we have had a number of discussions about it. The first lady has clearly made childhood obesity and nutrition issues one of her signature projects that she is taking on, and in addition to prevention and wellness education, she's now the most famous vegetable gardener in the world, and I think those steps lead up to what she hopes will be a major action initiative, give some example of the power of her bully pulpit, and she intends to use it.

So, the Administration is very much engaged and feels the urgency of this issue. One of the most significant steps taken so far is the $650 million in

the Recovery Act that will be targeted toward community efforts on obesity and smoking cessation. It's the single biggest investment in wellness and prevention ever in the history of the United States, and will give us an opportunity to really, particularly in the area of obesity, do some projects with some measurements to see what works, and in urban areas and rural areas, in tribal nations and in communities, we want to have on-the-ground projects to really see what actually moves the dial, what has an impact on Americans.

From a narrow perspective, it's easy to see why weight comes up and down. The number of calories in and the number of calories burned creates that balance about what you weigh, but what we've learned is that there are lots of other variables in addition to what goes into your body and what you use in your body.

Whether or not you get healthy meals at school has a big impact. Whether there are supermarkets that sell fresh fruit and produce that are easily accessible. Whether it's actually safe or secure in a neighborhood for kids to go out and play. There's a lot of conversation about parents turning off the television and sending your children outside. That's a great idea, except if outside is much more dangerous than inside, which in some cases, it is.

What happens in gym class, in schools? Do kids get to run around, or do three-fourths of the kids stand against the side watching some of the kids run around, or do they wait for one or two pieces of equipment and basically spend the entire class sedentary or does the class even exist anymore. In many schools in this country, that has been one of the products of moving to a more intensive testing regime that physical education has really disappeared in classrooms across America.

The answers to those questions really matter. It turns out that what we eat is only a part of how we decide what we eat. Cost and convenience are equally important. You may not want a chocolate bar to eat, but if you've only got a dollar and if you've got a vending machine that's full of various kinds of fatty snacks and chocolate bars cost a dollar, it may be what you choose to eat.

So, we have to look at all the strategies that involve healthy food and nutrition. Recognizing that all those factors matter, most of the $650 million is going to go to local communities and various kinds of projects to strengthen a variety of opportunities for health and wellness and nutrition, but also give us some opportunity to measure results and learn about what really works.

Now, a lot of factors involving obesity have to do with kinds of foods available to Americans, but we know that there's another category of influences about what we eat, and that is advertising. So, today, I want to talk about two kinds of advertising in particular: What's on television that is targeted at kids, and that would include the video game market and other kinds of media marketing; and what's at the front of packages, so when you go into the grocery store, what kind of advertising hits you in the face?

Those are the labels targeted at parents. So, we've got something coming at kids, and we've got additional messages coming at parents. There is something disturbing that I read recently. Market research, which surveyed kids to find out their top ten most beloved brands, what are children paying attention to? Not surprising, one favorite was Disney, another two were two of the most popular video game systems, but the remaining seven were some of the most unhealthy foods in the market, from Cheetos to Doritos. Those came up as the things kids love the best in terms of brands.

Of course, you think, kids love junk food. I know my kids love junk food. But in the context of the huge health consequences of childhood obesity, it is

pretty disturbing how rapidly children can identify the products and the brands out there. It's not a surprise. The companies making these products spend a lot of money branding them for children. The reason that they spend $1.6 billion a year, according to the FTC's survey, more than the gross domestic product of Belize, marketing food to children is because it works, and clearly the survey indicates that it works pretty well.

The research is pretty clear. Our children spend more than five and a half hours a day using various media. For almost all of those hours, they are subject to advertising. So, there's a lot of messaging in and out. Almost as much time as they spend at school, they spend in front of various kinds of computers or television screens.

If you're watching a children's television network, according to a recent survey, you'll see a food ad every eight minutes. So, that is a lot of time over a five-and-a-half-hour period of time. These aren't ads for All Bran or Fiber One. In fact, one group of researchers studied this and found that compared to cereals marketed to adults, cereals advertised to kids have 85 percent more sugar, 65 percent less fiber and 60 percent more sodium, all ingredients that lead to weight gain and obesity. They've also looked at the top ten

most unhealthy cereals that were advertised, and the top ten cereals that were advertised to kids, eight of the ten are the same.

So, again, marketing really pays off with children.

With new ways to reach kids emerging, like websites and games that can be given even more effective and harder for parents to monitor, now is absolutely the time to act. Our Interagency Working Group has been working hard to develop recommendations for national standards and nutritional standards we use to decide which ads should be shown to kids.

Later today, you will hear about the first draft of those recommendations. But no matter what standards we create, we're not going to stop kids from loving Cheetos. In fact, I love Cheetos, and my 88-year-old father loves Cheetos, so it's a multigenerational addiction in my family. The good news about Cheetos is you can see orange hands, that's how I actually figure out they had Cheetos. The hands give it away.

But if a child gets diabetes when he's 18, partly because he, when he was younger, he only ate the foods he saw every day on TV, and the Internet, it's not his fault. It's our fault.

So, we need to start doing a better job

regulating the types of ads that our kids see and working with parents and teachers and others to spread the word. That's what these new standards will do, and we welcome input from all of you as we try to get them right.

Now, the other piece of advertising that I want to talk about for a few minutes today is food labeling. Another HHS initiative that we're launching around obesity and marketing has to do with food labeling. The nutritional messages targeted at parents, specifically the front of the package labeling.

Now, you've all seen recently what's happening on boxes. Green checkmark and number ratings, stars, smiley faces, hearts, a handful of other icons that you see as you walk up and down the aisles of the supermarket. The labels are popular. People are really looking for some kind of information to do what's good for their kids to make some healthy choices.

Now, when I was a mom of younger children, we didn't even have the nutrition facts on the back of the boxes, you were really kind of on your own to figure out what was good or bad, but even if those labels on the back had been there, I, frankly, didn't have time when I was shopping, usually with a kid in the supermarket cart, to pull out every box of cereal and go to the back

and try to read what is a pretty difficult to read bar code on the back of the box.

So, we need an easier way to get nutrition facts out to people.

Icons are helpful. Everybody knows the Siskal & Ebert two thumbs up for movies. They did it because it works. It labels things in an easier way. It's why Consumer Reports has editor picks.

Now, we don't think front-of-box labels should replace nutrition facts, but we do think they're potentially a useful way for busy shoppers to try and make sure that their families are getting healthy foods.

I say it's potentially a good way, because the labels are only as helpful as the information they convey, and in that area, the record has been pretty mixed. Right now, there are way too many labels, so consumers have a hard time knowing what each one means, and what makes it even harder is that different manufacturers have used different criteria to decide which products offer the most nutrition. We saw recent examples of that when front-of-package labels on nutritional food included endorsed products like Froot Loops and mayonnaise as healthy choices.

Now, that label may have been technically accurate, according to some criteria, but the bar was

set pretty low when those kinds of products are actually labeled as nutritious. So, our new commissioner from the Food and Drug Administration, after seeing the gap for the potential of the labels and what is being done right now, the FDA decided to launch a plan to create some basic scientifically valid rules that could help the labels actually work for consumers, and meet a higher standard.

The first step was to write to the food industry, explaining what we were doing, and calling on them to work with us, to take more responsibility for nutritional information that they were providing to consumers, and we got some immediate good results. Not only was the Smart Choices Program suspended, but just a few days ago General Mills announced it was going to reduce the amount of sugar, voluntarily, it adds to cereals marketed to kids.

These are the kinds of positive changes we saw when we introduced the nutrition facts label in 1994, and by the way, that label is being updated, too. It's way out of date. It doesn't even include a sodium content. So, efforts are under way, not only to address the front of package, but also to look at the back nutrition facts labeling. It's why we believe that credible, standardized and easy-to-understand labeling

cannot only help consumers make healthier choices, but put pressure on producers to make healthier products, and do it simultaneously.

I think all the conversations I've had with executives in the food industry understandably indicate that we don't want to be economically punished if all of our competitors are still clinging to an old system and we're trying to do the right thing, only to lose a huge amount of market share.

So, whatever we do has to be done across the board and have some uniformity, again, which is why having some standards that are measurable across producers makes good sense. We want to take three additional steps to make front-of-package labels work better for consumers. First, the FDA is in the process of identifying and analyzing front-of-package labels, not only here, but around the world, that are helpful, and we're going to take a look at what works and try to come up with a strategy and seek your input along the way.

We're analyzing the labels that appear to be misleading, and considering appropriate enforcement action, which the FDA currently holds. We want to produce a rule that will create consistent criteria for food labels. Right now, it's up to manufacturers to

individually decide what criteria to use to rate the nutritional value of their own foods. Having one set of science-based criteria, we think, will help consumers get good information. At the same time, allowing manufacturers to highlight their healthy food qualities.

Third, we're going to be conducting a wide array of consumer research to see what kinds of front-of-package voluntary government-approved system would be the most effective for retailers and manufacturers to use. The advantage of this approach is that it could serve as a universal system that consumers could count on regardless of what manufacturer or what retailer used it.

No companies would be required to use these symbols, but they give healthy producers an advantage. It might prompt less-healthy producers to reduce their sodium and calories to get that kind of label on their packages, which is exactly the kind of health competition we would like to spur in the marketplace.

So, we are moving in all of these areas, and again, look forward to a collaborative dialogue as we move forward. We will be hearing more about the progress we are making from FDA Commissioner Peggy Hamburg some time in the very near future.

When we talk about childhood obesity, the

challenge can seem pretty overwhelming. The trend is not good, the platform that we start from is not good, and we need to do something pretty dramatic. Unfortunately, the epidemic is widespread, there are many, many reinforcing factors, the health risks are enormous, and the costs to our health system are so high, but the flip side of the challenges that we face tackling this problem is the opportunity that we have in reducing childhood obesity. If we can bring these numbers down even a little bit, there are huge cost benefits for our health care system, there are huge cost benefits for the health of our nation, and I would argue for the prosperity of our nation. We are looking at a workforce, as the chairman said, who not only might have shorter life span than their parents, but who clearly will spend a lot of those lives with an unproductive work history, absenteeism, missing jobs, not able to secure the jobs, which will make our country as a whole significantly less competitive in a global marketplace.

Now, it won't be easy, but we can start by not overwhelming kids with ads for unhealthy foods, and making it easier for parents to figure out which foods really are healthy.

So, I am looking forward to working with all of you to certainly continue our collaborative effort with

the Federal Trade Commission. This is a very interagency effort. The Department of Agriculture is very much at the table. The Department of Education is very much at the table. So, as we look at everything from school lunches to food deserts in communities, we are looking at these strategies in a collaborative fashion, and led by the President and the First Lady, I think we can have a very successful initiative for the health of our children.

Thank you all very much.

(Applause.)

MR. FENTONMILLER: Thank you, Secretary Sebelius.

Okay, we're going to set up now for our first panel of the day, New Research on Food Marketing to Children, and as we set up, I will turn it over to David Britt, the moderator.

MR. BRITT: I'm having senior onset technophobia. Good morning, everyone. I am going to try to set a context for the research that we are going to be dealing with this morning. To do so, I will start not by introducing our panel, which we will introduce as we go along and whose biographies are in your materials here, which I hope at some point you have a chance to read. We have a lot of stuff to cover in this

particular session, so it's going to be a natural experiment in self-regulation. I'll see where it ends.

As I said, my goal is to provide a brief context for our presentations and our discussions. Food and beverage marketing to children and youth has been actually transformed, I think, in the last five years. Research, and the policy development it informs, is rising now to meet a very wide range of new challenges.

Some data points, some of which you've heard already, so I won't go through them again. Let me add a slightly different take on the one that Secretary Sebelius mentioned, which is that a recent estimate of obesity-related costs, the number she talked about in terms of diabetes expanded to the rest of obesity-related diseases comes to about nine percent of the total U.S. health care cost today. She indicated that's twice what it was ten years ago, and this estimate suggests that ten years from now, it will double again to 20 percent. So, we are looking at upwards of $340, $350 billion in today's terms.

This dollar estimate doesn't reflect, not only the work force costs, but also the quality of life costs for literally millions and millions of young people. Soon to be older people.

The IOM committee brought together relevant data

and analyzed some 30 years of peer-reviewed research around the issue of food marketing in children and youth. Its findings of causation were rigorously and very, very conservatively determined based on systematic evidence review.

The report called for an integrated, sustained program of action by all the relevant players. Because obesity is a public health issue and priority of first order, the committee recommended progress in the necessary course corrections in two years, which would have been 2008.

Today, we are seeing a real renaissance, in fact, in the area of research, some of which you are going to hear about this morning, and some of which is going on all over the country in places such as the Healthy Eating Research Center at the University of Minnesota directed by Mary Story and run by Robert Wood Johnson. Government and education at all levels is now focusing on this issue.

What Secretary Sebelius talked about today of different agencies with different agendas and long-standing jurisdictional, shall we say, values, are really working together for the first time in a long time, and at state and local levels as well, to begin to tackle this problem. One of the most important was the

last year's release of the FTC study, which is going to be repeated again.

But the fact remains that overall, there isn't yet the integrated effort necessary to make the progress we need to change the trajectory of childhood obesity. Instead, what we've seen is acceleration and integration of the variety and intensity of the food marketing of children, targeting children and youth, to an unprecedented level.

Current research is documenting the current reality, and that is that food marketing to young people, both traditional and digital, still works. The great preponderance of marketing still promotes foods that are high in calories, fat, sugar and/or sodium. Self-regulation schemes, well intentioned, don't cover many important industry players and marketers, don't cover many critical venues, and are, as the Secretary pointed out, quite idiosyncratic in terms of individual company-by-company definitions of what is nutritionally permitted.

Finally, digital marketing is accelerating an additive to traditional marketing. Research is telling us, in fact, that marketing is working harder than ever. It has become food and beverage marketing 2.1. It includes all of marketing we've known for the last 35

years around TV ads, and they remain important and critical because they sell product, and because they allow companies to keep their brand recognition high, and competitively fight for mind share for brands so that kids know enough to make Cheetos the brand they remember the most in the world. It takes this traditional ad frame, television ad frame, and blends it with a variety of digital techniques, marketing brands, brands and product avatars, to targeted audiences to extend and deepen the individual engagement that they have with young consumers.

All of these subjects are going to be dealt with in terms of studies that have been conducted by our panelists this morning, so you will hear more about what's really going on from people who actually have figured out what's really going on.

Food marketing 2.1 integrates TV and digitally marketed products and brands, as we all know very well. For researchers and policy-makers, marketing 2.1 brings new and different challenges, such as the need to monitor exposure, times of engagement, awareness of marketing efforts, not simply the dollars spent on the marketing issues.

We need to have more attention on analysis of marketing, in terms of its impact on specific subgroups,

ethnic minorities, adolescents, the already overweight, who may be particularly vulnerable to marketing messages around foods that are high in sugar and sodium and fat.

We need to focus on performance, in terms of reducing marketing exposure to food high in calories and sugar and fat and increasing marketing exposure, the other side of that coin, increasing exposure of marketing of foods that are healthy and lead to a healthier diet.

Neural marketing, this is kind of the new buzz word in the world of marketing. What's new about neural marketing, because after all, all marketing traditionally has, in fact, turned play on emotions to sell products, is the use of the measurements of activity in different brain centers and other related measures to shape, evaluate and quickly adapt the impact of marketing messages so that they can be more effective and that they can be dropped when they are no longer effective.

As one marketing consultant touts it, your messages or materials will be absorbed directly into the consumer's subconscious where we can measure their effectiveness, devoid of outside contaminating factors, like education, language, ethnicity, cultural or other factors. You can't make this stuff up, actually.

(Laughter.)

MR. BRITT: It's now reported that some 90 firms are selling neural and related emotions-based research techniques to marketers, and we don't want to overstate some of this stuff. Remember, these folks are presumably attempting to excite the emotional centers of marketers and food companies, and sometimes when you read it, it looks a little bit like the little machine with the red lights that flash on and off, and nobody is quite sure exactly what it may mean.

Nevertheless, it is being used, it is being bought, and it is being used to the point where it is no longer experimental or being something that people are trying out. It is now mainstream marketing. So, whether they're right or not, they believe it's right.

It is being retrofitted, the results are being retrofitted to traditional television advertising and other kinds of product placement and all of the usual stuff.

In terms of the emerging research challenges of neural marketing, I think it's quite clear that there is broad consensus on the very first two points of this particular screen. There are fewer neuroscientific studies that have focused on food marketing per se, but there already is good evidence supporting the second two

points as well. Neuroscience is developing rapidly and has learned much already about the development and functioning of a variety of brain centers that relate to cognition and emotions and how they work together to help frame behavioral choices.

More work is under way, and more is needed, and interactions among transdisciplinary teams of researchers are needed to understand how adolescent development in particular responds to marketing, as well as other important issues that confront youth.

I think it's clear that any earlier assumptions we may have had that there is some bright point in cognitive development before adolescence, after which young people are sufficiently armed to defend themselves against marketing, is simply wrong. The future has become reality, and we now know that.

I think the research is also clear that even cognitive understanding of marketing and its intent is more difficult and complex in a digital marketing environment that includes advergames, product placement, pure participation, a whole variety of techniques which Kathryn is going to talk about later that blur and change the landscape for young children, as well as older children.

Each of these issues, remarkably, is a whole new

set of research challenges, added to the research challenges that we've already talked about, such as the impact of marketing on adolescents. Each will require forging new partnerships, among disciplines. Each will require accessing adequate research funds and making research accessible to policymakers and to the public, all at a pace that is six to ten times faster than the pace of change in marketing as we've known it for the last 35 years.

Let me finish my part by saying that food and beverage marketing 2.1 represents a quantitative as well as a qualitative leap in marketing reach, speed, weight and intensity. Research to inform and evaluate policy in an effective performance-based regulatory environment, including self-regulation, has to be similarly comprehensive, integrated, quick and adaptive. Nothing less will be adequate to change the current trajectory of obesity.

So, I hope that with that frame we can now get down and look at some of the real scientific work going on, and for that, I want to turn to our first -- I'm sorry?

(Applause.)

MR. BRITT: Do you have any idea what it cost me to get him to do that?

(Laughter.)

MR. BRITT: I want to introduce our first panelist, Jennifer Harris, from the Rudd Center at Yale University, down the street from where I live in the summer, and Jennifer, as you can see from her biography, is not only a skilled researcher, but she has actually worked on the dark side, as some of you like to call it, for years and years, so she knows what of which she speaks.

Jennifer?

DR. HARRIS: Good morning, everyone.

As David mentioned, the Institute of Medicine report on children and food marketing highlighted the need for more research on how food marketing affects the diet and diet-related health of young people. That was the reason I conducted the research that I'm presenting today.

Research on the effects of food marketing to young people has traditionally focused on how it affects product preferences and purchasing behaviors, and when children know that advertising is trying to persuade them. These questions are extremely important, but I believe that there are many other questions that we could be asking how marketing affects much broader health-related beliefs and behaviors, and that we need

to do this before we understand the full impact of food marketing to young people.

So, in this research, I asked a different question, which was: Does food advertising cause us to eat more? I based this question on the large body of social psychology research on priming effects. Any of you who have read the book Blink by Malcolm Gladwell will have read about the research that shows that very subtle cues in our environment affect our beliefs and behaviors in ways that we're not aware of and that are very difficult to control.

In the field of eating behavior research, there have been many studies to show that external cues can have powerful effects on how much people eat. So, focusing on the taste or smell of the food, subtle things as the size of the container, how many colors are in the food, the portion size, what people around us are doing, all of those factors have been shown to affect how much we eat.

Now, food advertising is not exactly a subtle cue, but priming effects also occur when we're not aware of how the stimulus is affecting us, and what we found is that most people do not think that food advertising affects how much they eat, which ironically makes it possible that it could do exactly that.

So, to test this hypothesis, we conducted three experiments. Our first two experiments were with children in second to fourth grade, and we chose this population because we know that they understand that advertising is trying to persuade them, but they're not yet able to activate their defenses against it. But if these facts are actually unconscious and occur outside of our awareness, then they should affect adults as much as they affect children, so our third experiment was with college students.

I'm going to report the results of experiments one and two together, because we used the same method for both of these experiments. The difference was in our first sample, we had a group of higher SES children who had unfortunately lower than average television viewing, so we thought it would be important to replicate the study with a larger sample of a very diverse group of children of diverse ethnicities, race, and normal television viewing.

In total we met with 108 children, and the way the experiment worked is we invited the parents to allow their children to stay after school and watch a television show. So, we met with all of the children individually. They were in a comfortable room and they watched a 12-minute session of Disney's Recess, which

used to be popular with this target group.

They were randomly assigned to one of two conditions: In the food advertising condition, the program that they watched had four food ads inserted where they would normally appear in the program, and these were ads that we picked from children's television that were typically shown, but the children in the controlled condition saw four ads for other products that weren't food-related.

While they were watching, we gave them a big bowl of Goldfish crackers as a snack. You'll notice that the snack that we gave them was not the same as the foods that were advertised.

After they left, we measured how much they ate and we predicted that children who saw the program with the food ads would consume more, which, in fact, they did. They consumed 45 percent more Goldfish crackers when they saw the program with food advertising, and as you can see, we found the same effects with both of the samples we looked at.

So, children who saw the food ads ate 28.5 grams of Goldfish, and children who saw the control ads ate 19.7 grams. Just to put this in context, if they had been watching for a half an hour, they would have consumed 94 additional calories from watching the food

ads.

When we designed this study, we thought there would be a lot of individual characteristics that would also affect how much children ate. So, we also asked their parents to give us a lot of information about their children to try to control for all of those factors. Probably the most surprising thing to us about this study was that we didn't have to control for anything. All but one of the individual factors that we measured was not related to how much they ate.

So, how old they were, whether they were overweight or normal weight, their ethnicity, whether they were in a lower or higher SES community, their appetite as assessed by their parents, how long it had been since they last ate, how often they snacked while watching television and how often they watched television. None of these factors was related to how much they ate or affected the results of the study.

There was one that was, which was how much they liked Goldfish crackers, and this was according to their parents. So, not surprisingly, the children who liked Goldfish consumed more Goldfish, but whether they liked the product or not, the food advertising still caused them to eat more.

In our third experiment, we, as I mentioned, we

wanted to see if these effects occurred with adults as well. We were also interested in whether the effects persisted after they had been exposed to the advertising. So, does it only occur while you're watching TV or does it occur at a subsequent meeting occasion after you've finished watching.

Lastly, we were interested in how the advertising message affected these results, specifically whether a message about nutrition and health or healthy foods would have the same effect.

In this experiment, since we were working with adults, we had to be a little bit more careful in what we told them about what we were doing. So, we had to have a cover story, which was that they were participating in a study on television and mood. They were all very fortunate, because they were in the comedy condition, but in fact, everyone saw the same clip from Whose Line Is It Anyway.

Then, there were three different conditions. So, people were randomly assigned to the control condition, which included 11 ads for non-food products inserted where they would normally appear. It was a 16-minute clip, and this was the number of ads that they would typically see in that time frame.

In the snack food condition, we replaced four of

those 11 ads with ads for products with a snacking and enjoyment message, and then in the nutrition advertising condition, we replaced four of the ads with advertising that promoted nutrition and health.

Now, the nutritionists in the room will probably tell me these products aren't necessarily very healthy, but what we were interested in was the message that was conveyed as opposed to the healthiness of the food themselves.

So, people watched in the room, comfortable room with a television set, and then we asked them if they would be interested in participating in a second study on a consumer testing study, and when they agreed, we took them to a different room with a different researcher, and this was the first time they knew that the study had anything to do with food.

So, in the room, there were five foods laid out on the table, and we asked them to taste each of the foods and rate them. There were two unhealthy, very unhealthy foods, two foods that people considered to be moderately healthy, and then carrots and celery, which were the actual healthy options. All of the foods were presented in plain containers, no packaging or branding were there, and we asked everyone to taste each one at least once, and rate them, but they were free to consume

as much as they want. We left the room and they told us when they were finished.

Our prediction was that the people who had been exposed to the snacking commercials would consume more, which is what we found. So, people who saw the snack food advertising ate significantly more than people who saw either the nutrition or the control ads. The difference between the nutrition and control wasn't statistically significant, but it looks like that message may have reduced consumption somewhat.

Now, this is an overall message that combines all of the foods that we were looking at, but if you look at each of the foods individually, you'll see the same pattern. In all cases, they consumed more of the food when watching the snack ads, and less when watching the nutrition ads.

It didn't matter how healthy the food was. So, even the carrots and celery sticks, they consumed more in the snack ad condition and less in the healthy ad condition.

We were able to rule out some alternative explanations for these results. Consumption was not related to mood. It wasn't related to whether they recalled the food ads or not, and it wasn't related to their reported hunger. So, the one exception was in the

nutrition condition, how much they ate was related to their hunger. So, it seems like that message might have deactivated the snacking message somewhat.

So, in summary, unhealthy food advertising increased snack food consumption. It occurred with children and adults. These effects, we concluded, were automatic. The respondents did not know that they were affected in this way. It happened when they were watching TV as well as during an eating occasion afterwards. It generalized to other foods that taste good. So, none of the foods that we advertised were the foods that they ate, but we still found those effects.

The situational factors were most salient. The effects of the advertising were much stronger than any individual differences that we measured.

So, in the future, we plan to ask more questions about how food marketing affects us, and these are just a few examples of questions that psychology research suggests we could be asking and that we could be showing having an effect. I believe that as we move on to new questions such as these, we will discover profound effects of food advertising on many different diet and health-related outcomes, and these findings will make it clear that we need to protect children from unhealthy food marketing influence.

I would like to thank my co-authors, John Bargh and Kelly Brownell, everyone who helped with the study, and I would also like to point out that our website, yale.ruddcenter.org, so please visit it, and thank you all for the opportunity.

(Applause.)

MR. BRITT: Thank you, Jennifer.

Our next panelist is Inas Rashad Kelly, who is an economist at Queens College, CUNY in New York, and also a research fellow at the National Bureau of Economic Research. She's going to discuss her recent studies.

Inas?

DR. KELLY: I would like to acknowledge my co-author, Tatiana Andreyeva, at the Rudd Center for Food Policy and Obesity, and we are looking at exposure to TV food advertising, food choices and childhood obesity. This is still ongoing research that is actually funded by the Robert Wood Johnson Foundation.

This study is important for several reasons. One of the reasons is that it actually shows categorical effects of food advertising. So, not only is the food industry predatory in nature, they're not just competing with one another to capture market share. So, for example, when you see an ad for Burger King, they're not

only taking customers away from McDonald's. They're increasing food consumption in general.

So, we're looking at all of food advertising, fast food advertising, soda advertising and cereal advertising, which actually in the FTC report were the top three advertising categories, and we're looking at the effect on overall consumption, and we do find increases in consumption, which shows the cooperative nature of these advertisements.

As our moderator, David Britt, referred to the IOM report in 2006, the Institute of Medicine actually concluded, and that's the last bullet point, that there's still weak evidence of a causal effect of advertising in general, food and soda advertising on childhood obesity. So, there's still a huge gap in the literature here, and we're seeking to fill that gap.

Some other studies, Lisa Powell and her colleagues at the University of Illinois at Chicago actually found that 98 percent of children and 89 percent of adolescents are exposed to food advertising for food products that are high in fat, sodium and sugar.

Margo Wootan from the Center of Science and Public Interest will be speaking later on today, found in a brief report recently that 59 percent of companies

that identify their ads as appropriate to market to children actually don't meet third-party standards. So, it's important that more research be done in this area.

So, our research goal in this particular study is to look, so we gathered advertising data from the Nielsen Company on soft drinks, fast food and cereal, and we look at those effects on food consumption in children. Actually so far we've just got children, we've got up to fifth graders in this study, but we're planning on including eighth graders and also very young preschoolers as well. We're looking at the effect on food consumption behaviors and in turn the body mass index or height-adjusted weight.

Now, some previous studies, of course, there's the 1985 study by Bill Dietz and Gortmaker that actually shows that those who have more screen time, for every additional hour of screen time, that actually increases obesity by two percent, and other studies that have followed have shown that middle school children who watch more television are more likely to purchase soft drinks. It might be partly due to the ads that they're exposed to. Similarly, children who view videotapes with embedded commercials are more likely to choose those advertised items.

Now, this is in contrast with a few studies that

haven't showed an effect in looking at childhood obesity in places that have basically banned advertisements for children 12 years of age and younger, such as Quebec and Sweden, but those were cross-sectional studies, and as we heard, things like BMI take a while to change over time. That's one of the things we're planning on doing.

A more recent study by Epstein and colleagues actually was a randomized trial and took students, or children rather, and reduced screen time for a randomized set of children, and actually found that it lowered BMI, I believe five years later in life. Some might argue, well, if they're reducing screen time, they might be participating in physical activity. It doesn't necessarily have to do with, say, being exposed to advertisements while watching television. They found that it was solely due to decreased caloric intake and not to decreased sedentary behavior.

In my previous work with Shin-Yi Chou and Michael Grossman, we have used the National Longitudinal Survey of Youth to actually find an effect. We hand-picked 41 fast food companies, took into account the causal nature. So, those fast food companies might choose to advertise in areas where demand is higher. We took that into account and we actually found effects on overweight status and obesity in children and

adolescents. So, 12 to 15 percent for children, and four to 17 percent for adolescents.

We also looked in that study at the implications of banning, or eliminating, rather, the tax deductibility for advertising, which might be part of the reason why they spend $1.6 million on advertising. So, it's important to look at those implications as well.

In this study, we don't use the National Longitudinal Survey, we use a restricted use data set in the Early Childhood Longitudinal Survey. And this is longitudinal in nature, so it follows the same students over time. They start in kindergarten, and we've got so far up to fifth grade. We have got data on eighth graders as well, but the results I'm presenting here are only for fifth graders, so this is still ongoing research.

So, we've got information on where they live, and so we actually merge these data with advertising data by designated market area, which is similar to a metropolitan statistical area, and these are the measures that the advertisers, the Nielsen Company, gives us. We collect data and merge it for cereal, fast food and soft drinks from the Nielsen Company.

For the top 56 designated market areas, this

might not seem like many market areas, but it actually covers over 70 percent of exposure, advertising exposure, so it gets to a wide audience.

Just to be clear, the actual soft drink measure that we use, it doesn't just refer to soda or carbonated beverages, it actually refers to sports drinks as well, so Gatorade, and also fruit juice that isn't 100 percent. So, things like Hi-C, Koolaid, that's also included. That's included in the advertising measure and luckily it's also included in our food consumption measure that they ask the children. They either asked the children or one of their parents.

So, during the past seven days, how many times did you drink soda pop, or fruit drinks, sports drinks or fruit drinks, and that's the question on soft drinks. The question on fast food is during the past seven days, how many times did you eat a meal from a fast food restaurant, to be designated as one of the quick service restaurants.

Now, our food consumption distribution looks like this. It's somewhat distributed, highly skewed to the right and we do take that into account in our analysis.

So, our dependent variable, what we're looking at, the outcome is actually both soft drink consumption

and fast food consumption, so we're looking at the effect of three types of advertising on soft drink, cereal and fast food consumption.

Our main results, this just shows advertising on the right-hand side. We do control for a comprehensive measure of socioeconomic status, which takes into account both parents' education and their income levels. We control for gender, and race, on the right-hand side, and we also control for television watching on the right-hand side. That doesn't change our results, whether or not we include television watching on the right-hand side, which was interesting.

We find significant effects. Looking at the last column, where we include fast food, cereal and all soda advertising, we find significant effects: Magnitudes may look small, but it's partly due to what we're measuring. The advertising measures are in gross rating points, and those are very low.

So, for example, an increase in just one gross rating point, that means, for example, one advertisement has reached one percent of the intended audience. That's a tiny increase. So, a more relevant increase might be, say, a thousand. So, looking at that, you would find very significant increases in fast food consumption.

So, we find soda and fast food advertising positively and significantly associated with fast food and soft drink consumption in fifth graders. We do stratify, also by income level, we find that the effects are much greater for low income families than for high income families, which is interesting. In preliminary analyses, we still don't find much with the body mass index, but that's because we're getting a snapshot and not looking over time, and so we're going to do more analyses and use a cleaner approach for the body mass index models, especially once we merge the eighth graders in.

So, our further analyses, we will use a different methodology, we will use specification checks, and we'll use not only the ECLS-K, including eighth graders, but we also plan on using the ECLS-B, the birth cohort, and look at preschoolers as well. The birth cohort actually has information on mothers pre-pregnancy and post-pregnancy BMI which could be somewhat helpful for controlling for genetic effects, which we can't do as well with the ECLS-K.

This is our contact information.

(Applause.)

MR. BRITT: Thank you. That was great.

Dick Mizerski, who many of you know, is chair of

marketing at the University of Western Australia and has worked a long time, well not a long time, he's not that old, but has worked with the relationship between children's recognition of trade characters and their use of future use of products. I was with a company that knew something about that. The effects of a fast food toy premium, and a lot of other really good and interesting work.

Dick? Thank you.

DR. MIZERSKI: Thank you.

Yes, I would like to talk today about a program of research we've been doing at the University of Western Australia, basically myself and my Ph.D. students, and I'm going to report on basically the stuff on masked marketing, masked marketing to very young children, and what kind of responses that it prompts.

I'll also add at the end some other information on some of the other studies we've done.

Masked marketing, by the way, is a term that was developed last year in the Journal of Public Policy and Marketing, and really looking at those messages out there that somehow mask either the source of the message, or the message itself.

Now, the reason is that individuals are much more skeptical of marketing or if they know it's from a

marketer, that information, than if it's from an independent source. So, clearly if we mask that, by either using something like an advergame or a product placement to that, I'm going to use buzz marketing or a whole bunch of other techniques, we believe that that prompts really a potentially dangerous situation, because now children may not understand that it's from a marketer and be much more vulnerable in terms of what we call persuasive knowledge.

The reason we're looking at very young children, I have done stuff with adolescents, but primarily we're looking at the years from three on, and that's because that's when they start to be targeted by food marketers.

At that age, of course, they're not really buying, but they're having a huge impact on the food choices of the family. We believe that they become very important. They're not actually buying, but they are having an influence on those people.

Now, we were talking about the impact of marketing messages, masked marketing. We're looking at two types. The first is the area of brand knowledge, which Keller and some other people are talking about memory and beliefs in images, and I'll talk a little bit later, very powerful in terms of the preferences and loyalty in young children.

We believe that this brand knowledge then leads to what was called brand equity, and we've been looking at preferences and choice and particularly brand loyalty and how maybe such things as premiums and toys might have an impact on children's decisions.

I'm going to be talking about two masked marketing techniques today that we've tested. The first one a Froot Loops advergame from the Internet that compared Froot Loops to fruit, and that appeared a year or two ago in the Journal of Advertising. There was a sample of five to eight-year-olds, and here we were looking at the short-term effects. So, they play the game and shortly thereafter, within five to ten minutes, they respond. We were always using a control group.

The second study that I am going to be talking to has yet to come out, it is going to be presented in March at a conference, and we are looking at a product placement in a children's magazine, which is interesting to me, in that we haven't found anything looking at product placements in children's magazines. Those of you who have children know that when they first start to read, they really are a voracious reader and it's very interactive and I think print media can have a huge impact in terms of what people or what kids think about.

I don't know how well you can see this first

one, but the Froot Loops advergame that we chose, and this was done by Victoria, my co-author, Victoria Mallinckrodt, shows this one. We chose this because we think it was deceptive. Right here you can see a scene in which the child throws either a Froot Loop or a piece of fruit at this monster. Now, if you throw a piece of fruit, which you can see the score right there, you get five points, and the monster goes, [mmm]. If you threw a Froot Loop, you get ten points, and the monster goes, [mmmmm], so we thought it's kind of fruit denigration.

So, our hypotheses were several. First of all, we believe that children who played the advergame would tend to believe that Froot Loops was better for them. Second of all, we thought that children who played the advergame would prefer Froot Loops to other cereals, and they also would prefer Froot Loops to other potentially more nutritious foods.

This gives you an idea of the actual questionnaire we had here, and we asked the children, five to eight years old, first of all they circled the cereal that they would prefer, and second of all, what meal they would prefer. You can see that they had a cereal, hamburger, sandwiches and sort of a fruit cup there. We found that older children in the treatment group tended to prefer Froot Loops to other cereal

options, and particularly for the eight-year-olds. So, the advergame compared to the control group had a strong effect there.

We had both seven and eight-year-olds preferred the cereal option compared to the control group against other foods as well. So, here we can see preferences were very much affected.

We then asked them, are you going to ask anyone in your family to buy Froot Loops, and we found absolutely no difference. Mainly because almost all of the kids wanted Froot Loops, and they were going to ask for them. So, whether the control group or not, it really didn't seem to have an impact.

Then we looked at this area what we call persuasion knowledge. Now, persuasion knowledge is the idea that kids who understand what the source of a message is, whether it's a commercial or non-commercial, and if they understand the intent, would somehow be inoculated or be able to guard against these persuasive messages.

Well, we found out with an advergame, and I think if you think about your own experience on the web, the first question we asked is who put this game on the web? And we had Toucan Sam, which is, of course, the trade character. We had my co-author, Victoria

Mallinckrodt, who was actually collecting the data, Kellogg's, which would have been the correct answer, and then the teacher.

We expected, and found, that as kids went up in age, more of them would specify Kellogg's, but Kellogg's only really got something like 26 percent. Most of them, and I guess if you think back, they're probably right, thought it was a researcher. I suppose in a sense it's probably true. But again, if you were asked what is the source you were looking at, you would probably have a hard time as well.

In terms of the two intents we asked them about, the first one, was the advergame trying to get you to cook with mom, we found only about five percent of the kids would respond to that. Learning in school, well, 45 percent said that. Eating cereal, 51 percent over our whole sample.

In terms of the second intent, playing tennis, only about six percent of the kids would respond to that. Buying cereal with mom, 60 percent. Playing computer games, 34 percent. So, I suppose it is kind of a computer game they were playing there.

One of the things that we found interesting, I'm not going to show the table, because that would be a little hard for you to see, is that we really didn't see

much of a change in terms of children's persuasive knowledge from the age of about six to eight-years-old.

The second thing is, and that really kind of surprised us, is that having persuasive knowledge had absolutely no effect on any of the responses. So, if they had persuasive knowledge, they didn't seem to use it in the way that we would have expected that to happen.

The other thing we did is we collected information from the parents, and we asked about the media use, how much television they watched over the week, and we also asked about the cereal use. We found out, all of the schools, we had ten schools we went into, five of the schools were lower socioeconomic, five of the schools were upper socioeconomic. We found a very strong social class effect in terms of the respondent schools, and it was negatively associated with highly sugared cereals.

So, as social class went down, the use of highly sugared cereal went up. Second of all, things that we've known for a long time, is that social class and television viewing is very much associated with media use, particularly TV. So, as social class went down, we found that TV use went up.

So, one of the things we have to be very careful

about here is understanding that there is a very strong potential effect, and I know that some of our other researchers here talked about adjusting for it, but we found very, very strong effects that may really explain in some sense why they're using that cereal.

We did a second study, just recently, and it's coming out shortly. Here we looked at a product placement in the children's magazine. This particular children's magazine, this is product placement right now for a Garfield 2 movie product, and I wish I had known that I was going to be here, several years after this happened, but when we did this study, we worked with a magazine. It's AFLJ Squad. It's a magazine aimed at little football players, and they provided us with information about the placement and also sent out the magazines for us.

The reason we did the magazines is we found out the four top magazines, kids magazines, had an average of about two-thirds of their content were commercial. About half of that were product placements.

Now, if you compare that to other media, it's much higher, and I haven't really looked at stuff over here in America, but I would imagine probably finding very similar kinds of things.

Now, we use the Garfield because we only found

about one percent of the placements or the commercial material had to do with food, strangely. We would have anticipated much higher than that.

I'm just showing you some of the area here, we had 236 boys and 20 girls. Interestingly enough, both of them played football and we didn't find any gender effects, and that was hard to believe, but little girls playing football with little boys, what would you expect? So, we interviewed about ten to 12 days after receiving the magazine. So, here we're talking about not like the first one with the advergame, relatively short-term effects, we're talking about long-term effects of maybe at least a week after they read the magazine.

What we found, and I think this would be very generalizable to the food area, is those kids who got the treatment, read the magazine, remembered the movie more, liked the movie, more preferred it to other children's movies that were showing at the time, more requested, or will request their parents to take them to the movie and will attempt to persuade their friends to see the movie.

So, what do we make out of that? Some tentative conclusions over our two studies in terms of masked marketing. First of all, we know that advertising, ad

placements, appear to causally induce memory in a product, preference for the product, intention to request the item and suggestion that their friends get the item as well.

Persuasive knowledge on children was positively associated with their age, reading ability, but not with their web experience, which kind of surprised us with the advergame.

Also the two components of persuasive knowledge, knowing the commercial from non-commercial content and knowing the persuasive intent, interestingly enough, were not related.

Some other interesting aspects were that knowing the commercial content appears much more important than knowing intent, and this knowledge seems to appear later than knowledge of intent. So, kids learn about intent much earlier than they learn about the differences between commercial and noncommercial, at least in Australia.

Persuasive knowledge is thought to be generally in place by nine years old, but we found at least half of our five-year-olds would have something that would be relevant in terms of what we would call persuasive knowledge. Having more persuasive knowledge presented very little effect in children's responses.

So, techniques like advergames and placements that kind of blurred this distinction between commercial and non-commercial content really challenged the effectiveness of a child's persuasive knowledge; however, they don't seem to use it when they have it.

Just to give you some additional findings with some of the other work we've been doing with the food area and young children. We have a study where we did in-depth interviews of three and four-year-olds where we obtained their brand knowledge about fast food choices and then they made a choice of the fast food they wanted as an incentive and then we tried to tempt them with a toy on their second preference to see if we could switch them over. We found their understanding of brand knowledge, particularly liking the brand, images about the brand and some effect aspects were very important in terms of their choices and also in terms of their loyalty. For those researchers, we could predict, based on their brand knowledge, about 85 to 90 percent of the time, what brands they would choose and whether they would be loyal to those brands as well.

Really the most important thing here is the most powerful elements in the sample's fast food preference in their loyalty decisions were two things, and we found this kind of interesting. One was their perception of

the premiums that were offered; second in the fast food, their perceptions of whether they had a playground. So, we have on one side, you know, the toy; on the other side, playing in the playground. So, we started to do a little bit more research and find that out. But it's nice to see that there are at least some other aspects than toys that were important.

We also did some interviews, in-facility interviews in McDonald's, and the weekend lunch, and we observed the behavior before we actually did an interview of the families. We found absolutely no effect of the difference between whether a child was present or not, and so really this aspect of pestering for a food toy didn't seem to have an effect.

Significantly, and strangely, we actually had more adults without children with them buying the toy than people that had children. So, this was kind of interesting.

By the way, just to kind of leave you with a very short thing here and remind you that McDonald's is the number one toy retailer in the world.

Thank you.

(Applause.)

MR. BRITT: So glad to know I'm not alone with buying toys at fast food restaurants.

Our next panelist, Kathryn Montgomery, is at the School of Communications at American University. She has a long and distinguished history in the area of children and children's issues, particularly including food marketing. She was part of, the founding part of, the Center for Media Education some years ago. She really with her colleague and partner, Jeff Chester, has really become perhaps the most knowledgeable about digital marketing and the new techniques that are not only widely in use now, but are being developed and adapted day by day. So, with that, let me ask Kathryn to bring us up to date.

DR. MONTGOMERY: Thanks very much, David.

Thank you very much. I'm very pleased to be part of this forum this morning, looking out at a lot of very familiar faces, having participated in a number of these over the many years I've done policy and research work here in Washington, D.C.

I do believe that the FTC does have a very, very important role to play in the youth obesity crisis, and I'm very happy to see all of the initiatives that the agency has undertaken.

We know from a large body of research on advertising, particularly television advertising, that the marketing of unhealthy foods is a significant risk

factor for obesity among children and youth. As more and more marketing continues to spread across a variety of digital platforms, these risks are increasing.

So, what I want to talk about today is a project that I'm working on now with several colleagues at American University, at the Berkeley Media Studies Group and the Center For Digital Democracy. I've been tracking the digital marketplace, actually, since the beginning, since it began in the early 1990s, and as some of you may know, was very involved in development and promotion of policy efforts around children's privacy and passage of the Children's Online Privacy Protection Act in 1998.

A couple of years ago, I began writing and focusing very closely on digital food marketing. This particular project is a broad project, that is part of, that is funded by the Healthy Eating Research Initiative, and that is funded by the Robert Wood Johnson Foundation, and many of us are here because of generous funding from Robert Wood Johnson.

Our goal is to develop a conceptual framework for really understanding the nature of this new digital marketing culture, and being able to translate that into a research agenda and a set of initiatives that can be undertaken by a variety of researchers.

What I want to talk about really is this idea, David, you set it up very nicely, you talked about food marketing, did you say food marketing 2.1? That was a good one. The industry often refers to a digital ecosystem, and I think that's a good way to think about marketing in the digital era. It's taking place across a broad spectrum of platforms, and on the Internet from social networks to mobile phones to games to many, many, many, many other platforms.

We have to understand, also, it's not that it's separate, digital media is not separate from television, and television advertising. It's all part of the same thing, and it's really where all marketing is going, and that's why I think it's so important for us to understand it. We also know that food marketers, along with other marketers, are moving many of their dollars into the digital realm, and following the eyeballs, as one of the marketers said.

A lot of young people, many, many young people, and I'm a parent of a teenager myself, and I know a lot of you are parents, we all know this, that many of our young people are living their lives online, living their lives in this digital media culture. It is a powerful force in their lives, particularly because it taps into so many of the fundamental developmental needs of

childhood and of adolescents, from identity exploration to self expression to their relationships with peers and their growing autonomy and independence.

The industry understands this very well, and has been doing tons of market research to really look closely at the relationship between industry marketing in the digital arena and young people's needs, development needs.

So, what I want to talk about, and David referred to some of the aspects of digital marketing, I would like to look at it holistically. I think it's important for us to do that. I don't have time to do go all of the individual techniques, but what I've decided to do is to identify what we see as some of the key features of digital marketing so that we can think about them as a whole and understand why it's so different from conventional marketing.

It is incorporating many of the techniques and practices of conventional marketing, but has expanded into a lot of other areas. We need to think about them all at once.

There is an article that I have left on the tables out in the lobby from the Journal of Adolescent Health that goes into these in more detail. I am going to quickly move through them and just show you a slide

for each of the features that we have written about.

First of all, digital media has created a pervasive environment that is always on, 24/7, and it can reach children and youth wherever they go. This includes, and we all know how many young people are using their mobile phones, it includes mobile marketing, which is one of the big growth areas that is able to follow a young person wherever that young person goes, and we've identified marketing campaigns for food products that create coupons so that you can get a soda or some other thing when you're near that particular fast food restaurant.

Another feature is behavioral targeting profiling. The digital media have created an unprecedented ability for marketers to engage in behavioral profiling and data collection. This means tracking behavior across platforms and developing personalized ads designed for individuals.

Behavioral profiling is also a very important aspect of multicultural targeted marketing that is aimed at Hispanic young people and African-American young people, along with all of the other strategies.

Social media marketing, and again we all know how popular the social network platforms like Facebook and MySpace are. I was just ferrying some kids to an

event at my daughter's high school, and one of the young kids said, I spend like six hours a day on Facebook, and I don't think my mom knows that much about it, but I do. But the marketers do know about it, and it's really a whole new field of social media marketing, and so it's tapping into the complex web of social relationships that are being conducted online to strategically insert brands and to take advantage of the social graph and identify who the key influencers are, who can then influence other people within their social network. So, it's a very, very important area.

So, digital media are also immersive environments, and there are a lot of aspects to immersive environments. Now see the state-of-the-art animation and high-definition video and other multimedia have created very, very compelling environments that young people can be part of and experience in a very subjective way. Children and teens are participating in them through a number of different platforms, including interactive games and three-dimensional virtual worlds.

So, for example, in-game advertisers can now direct personalized advertising messages at the most intense points in a game when users are in high stakes of arousal, and they can offer immediate gratification through online purchases, and thus triggering

mood-enhanced impulsive behavior. So, you begin to get the picture of what's possible.

Another aspect is user-generated advertising. With the growing popularity of YouTube and other video channel sites, we see more and more marketers developing campaigns to really enlist young people into creating ads themselves, which turns the conventional model on its head. They are no longer passive viewers, but now they are actually ad producers and distributors.

Also, David talked a little bit about neural marketing, which is the use of neuroscience to study the brain's response to advertising messages. That's a key part of this concept of engagement, finding ways to really deeply understand how people engage with ads in the interactive marketplace.

This trend suggests that digital marketing will increasingly be designed to foster more emotional and unconscious choices, rather than reasoned, thoughtful decision-making.

Then, finally, the integration of content marketing. We see now that the boundaries between advertising and content which have been disappearing since the emergence of e-commerce and the Worldwide Web have been practically obliterated. Now we're also seeing measurement and sales tied in before. Those of

us who have been working in children's television over the years know that there's been a long-standing set of principles of separating the advertisement from the program content. It's irrelevant at this point. That creates, I think, many, many challenges for researchers and for policymakers.

This week we released a set of papers that we commissioned from a group of scholars that we convened this past summer, and those papers are available on a website that I will give you at the end of my presentation. What we did was brought scholars together who were experts on child development, adolescent development, and particularly looking at some of the new research in those areas to get them to address the particular and unique challenges and issues regarded to digital marking. We're finding that in the new media marketplace, the old models of vulnerability no longer really hold.

For example, this idea that young kids don't understand the persuasive intent, as they get older, they begin to understand it, and therefore don't need safeguards. A lot of that is no longer relevant. Both because of the nature of advertising in the digital context, where implicit persuasion is as important as explicit persuasion, but also because what we're

beginning to learn about adolescence, and adolescent development, is there a's a constellation of biological and social and emotional developmental issues, and trends that take place in their lives, that may make them particularly vulnerable to marketing messages, particularly in the digital context.

My colleague, Sonya Greer, at American University, has also identified a set of vulnerabilities that are particularly unique to African-American and Hispanic young people.

So, what we're doing is developing a broad research agenda and a framework for researching and understanding digital media, which will require different kinds of methodologies. I'm just going to quickly go through these, and not get into them, but there they are. Looking, understanding, for example, it's not just the effects. It has to be beyond the effects. It's not just looking at an individual message, understanding the holistic set of relationships in this "360 degree marketplace." All of these things will be very, very important and there has been a resurgence in research. What we want to do is to make sure that researchers are looking more closely at the digital context.

Finally, having said all that, I think we do

need to continue to do research, but that in no way suggests in my mind that we take a wait-and-see approach to regulatory intervention. The childhood obesity crisis is too urgent for us to delay any responsible actions, and I think there really is a role for the FTC to step in and to create some fair marketing principles, some rules of the road to help guide the development of the digital marketing system that is so, so quickly emerging and growing.

I believe that the COPPA model, the Children's Online Privacy Protection Act model regulation may be a good one for us to look at. In this situation, we have a government regulatory framework with enforcement provisions, coupled with industry self-regulation and guidelines, that creates uniform standards that all consumers can understand, consistency across platforms and a level playing field for industry.

Anyway, I am happy to be part of this discussion, and I look forward to talking with all of you.

(Applause.)

MR. BRITT: Thank you very much.

I want to ask my co-moderator, Pauline Ippolito, to give us a little bit of commentary on her take. As we've been talking, she's been listening, and that's

sometimes dangerous, but always useful.

She's the Deputy Director of the Bureau of Economics here at FTC. She has worked on a variety of issues in her career and in more recent years has focused on the role of advertising in general, particularly with respect to health-related claims, and also on studies relating to marketing and children.

So, with that, Pauline?

MS. IPPOLITO: Well, I've got three minutes to sum it all up. What I'm really going to use my three minutes for is to tell you really why we invited this panel. There are a number of techniques as people try to explore from a research perspective what's going on in marketing to children, and the first two papers you saw, well, I may have the order wrong, but in the Harris and Mizerski paper, you saw two really good examples of experimental approaches.

The experimental approaches are nice, because you can put a stimulus, ads of some sort, have a control group, and then measure effects, or measure changes in attitude, changes in behavior.

So, you've got tight control over the stimulus and therefore have a better shot at explaining effect and knowing the causation.

Inherent problem, of course, with this approach

is it has to be a short-term effect. You have a stimulus, you put Goldfish in front of the kids, how many Goldfish do they eat? Or you have a stimulus, you have a second phase, and you have eating behavior.

So, it's very good in terms of the causation and the control, it's less good in terms of how does it all play out in the marketplace, in the world.

So, the Kelly paper takes the opposite approach, it uses in-field data to try to look at whether there's a correlation between kids who are exposed to more marketing and weight, or eating behavior. That's nice, because it's out in the real world, you've got all of the other influences going on, you can really try to see whether there's a tight correlation between the issue of concern through advertising and kids' weights, or eating behavior.

Of course the problem is, advertisers don't just throw ads out there, they target advertising, they target advertising to where they think it's going to do the most good from their point of view.

So, the key concern always in the in-field studies is how well have you identified variation in the variable of control, through advertising in this case, and the outcome variable that you're interested in.

So, she talked about various controls that she

tried to do, and it's a very good study by these standards, but that's always an issue in those kinds of studies.

So, it's important that when we assess the issue, we try to look at all kinds of research, how good is the evidence on causation, in the short-term studies, how does it play out in the real world, are we getting corroborating evidence there, and where are the weaknesses in the evidence that's out there?

The third type of work is the what-is-happening work, which, for we who have to make decisions, is a very important part of what we need to know. It is clear to everybody who follows marketing at all that things are changing. That's true. There's no question about it. How we measure, what we measure, what it really means, is it qualitatively different from what we've seen in the past, is it how do we know how different it is and whether it should matter and how it should shape our decisions. This is an important new area for exploration.

So, we're certainly trying to keep track of it, but it's changing very rapidly, and there's very little data at this point. Very little hard evidence that says that it has fundamentally different effects.

Appealing to the emotional reaction to a product

is not new. They didn't put all those beautiful women on cars for their information value. This is a technique that is well established in marketing. They're in a better position to use it now.

But it is different, as a mother of two 20-something boys, I can tell you. They live in a world that is very different than the world I live in. We need to pay attention to that.

I guess the one thing that I didn't hear a lot about, and I think is an important feature to add to the research agenda, is can you sell good foods to kids? How do you sell good foods to kids? I don't think food producers are out to sell bad foods deliberately to children. So, I think we need more work on how do you get kids to want to choose good foods? Salty foods taste good, apparently. Sugary foods taste good, apparently.

So, I think the other side that we need research on is what's the way forward? There's a great temptation to just say, stop advertising to children. Well, that would be hard to do, but even if we did it, does that really change the world very much?

So, I think another part of the research agenda that we really should be encouraging, I think, is how do you communicate to children that there are better

choices and that they could enjoy those better choices? So, I would like to add that.

Thanks.

(Applause.)

MR. BRITT: Just a couple of quick follow-up. I think we have a few more minutes. One, Kathryn, to you, with respect to the question that was just raised by Pauline, are you aware of any use in terms of the new digital media of efforts to promote healthier eating, whether it's healthier foods or healthier eating in general? I haven't seen a lot on the ground yet, but you follow this more closely.

DR. MONTGOMERY: I've seen, I haven't looked as closely at that, but I have seen some efforts in the virtual worlds. The CDC actually has a campaign in some of the virtual worlds that are targeted at kids who try to promote healthy foods. I don't know whether that's been tested. I do think it's an important area, as part of the bigger picture. I mean, it's such a huge area of research that needs to be done that certainly could be included, but there's a huge amount that has to be looked at.

MR. BRITT: It's also a fruitful potential area, you should excuse the word fruitful, because of the lower cost and the ability to change and adapt what

you're making an investment in to see if it has impact, and it may well not be product by product, but really --

DR. MONTGOMERY: Right, and I think you have to think about the overall context that such a message is inserted. So, there's one little campaign, but if you look at it in the context of all the other kinds of "messages" and "influences" that are part of the growing marketing, digital marketing culture, you have to assess whether it's going to have much of an impact.

MR. BRITT: Dick?

DR. MIZERSKI: I am just going to share at least what's happening over in Australia, as there is an enormous amount of government money going into promoting fruits and vegetables, and it is all over the place, any sporting event, on television, using the Internet. It's really not clear yet how effective it's been. People can tell you two fruits and five vegetables, that's their whole theme, but what impact its made in terms of obesity and weight and that kind of thing, it hasn't shown it yet.

MR. BRITT: There are very few examples, I think we all agree, in terms of research that really try to combine the approach of marketing to really mirror that which industry does so well, which is to brand the products and to wrap things together with avatars that

can last for a long time and build the kind of socialization that your research, in particular, found to be important. Brand loyalty at three and five-years-old, that's kind of a holy grail of marketing.

I think that really wraps us up. Jeff? No questions on this one, because we are literally out of time, and I have to congratulate, I have to say everybody says self-regulation doesn't work, but in terms of this panel, it did pretty well. But even so, we are out of time. We will have a great deal of time available or more time available in some of the other panels, in particular at the end of the day.

Thank you all very much.

(Applause.)

MR. FENTONMILLER: We're going to take a 15-minute break and we will reconvene at 11:15.

(Whereupon, there was a recess in the proceedings.)

MR. FENTONMILLER: Our next panel is Advertising to Children and the First Amendment. This panel will have question and answer from the audience. Staff members will be parading around the audience area with a couple of mic's, so if you have a question, raise your hand and they will hand you the mic'.

For people watching by webcast, again, you can send questions or comments to childhoodobesity@ftc.gov and that email address will be up at the question and answer portion of the presentation.

At this time, it's my honor to turn it over to our Director of Consumer Protection, David Vladeck.

(Applause.)

MR. VLADECK: Thank you. Thank you, and thank you very much for coming today.

I was asked to moderate this panel because I think in some ways I am uniquely qualified to do this. I think I'm one of the few lawyers in the country who has taken both sides of the commercial speech debate, arguing early on that commercial speech was entitled to constitutional protection, but also arguing that there are limits to the protection that ought to be afforded to commercial speech.

We have a really terrific group of panelists today, I would like to just briefly introduce them. I would like to start out in order and do this chronologically in terms of their participation with the Commercial Speech Doctrine. Marty Redish, an eminent scholar from Northwestern Law School, actually and this is a little known fact, this is all Marty's fault. Marty wrote an article in 1971 when I think he was still

in sixth grade arguing that the First Amendment ought to be read to protect commercial speech. Marty's article, written at that tender age, provided part of the intellectual foundation for the litigation that then ensued to persuade the Supreme Court that commercial speech was entitled to some sort of constitutional protection.

So, I am going to ask Marty to lead off in a minute. I am going to give each panelist five minutes to say their peace. Marty, because he started all of this, I think is entitled to go first.

To Marty's immediate right is Dan Jaffe. Dan is the executive vice president of the Association of National Advertisers. I think the title of Dan's position tells us where he will come out on some of these positions, but we are grateful for Dan's participation.

Then Tamara Piety is sitting next to Marty. Tamara is an old friend, she's one of the next generation of leading First Amendment scholars. She has written extensively on commercial speech.

Last, but certainly not least, is David Yosifon. David is a professor at Santa Clara Law School. The irony of that should not be lost on anyone who cares about constitutional law. Although Marty is the

immediate source of our problem, the real source of our problem is the Supreme Court's ruling in the Santa Clara Railroad case back in the late 1880s that corporations were persons under the Civil Rights Act, and therefore could assert constitutional protection under the First Amendment. So, it is only fitting that we have someone from Santa Clara.

So, I'm going to now get out of the way and ask each of our panelists to speak for five minutes. As a zealous regulator, I will watch the clock carefully and will not permit much transgression.

So, Marty, the floor is yours.

MR. REDISH: Thank you, David.

I should say at the outset that I decided a number of years ago that unless I am reporting statistical studies or need charts, I don't use slides, because I found out when I did that, people were looking at the slides and not looking at me, and I didn't think that made a lot of sense.

So, I'm just going to try to use the cerebral approach today, and I want to talk about three things. First, what are the values of the First Amendment that are indicated and protected by commercial speech. Second, where is the Supreme Court today on the issue of commercial speech? What kind of protection does it

give, what kind of regulations would it authorize or would it not authorize. Finally, take a little time to talk about the unique situation to regulating speech to children and how that alters the First Amendment.

First of all, what are the values of the First Amendment that are implicated by commercial speech? Why would an ad for Crest toothpaste or for a Toyota be thought to implicate the kind of Constitutional protections that would protect the "I Have a Dream" speech or the "Cross of Gold" speech, and intuitively, it's easy to assume that they have nothing to do with each other. But if you deconstruct them, you will see that the two are really connected.

Well, why do we protect speech in the first place? Why do we have a First Amendment? Well, the famous political philosopher of the 1940s, Alexander Meiklejohn, once said, "Speech springs from the necessities of self government." We are the governors, the people we call the governors are simply our agents. Because we in the exercise of our power of self determination as a collective society have the final say as to how we will live and how we will govern, we need information and opinion, competing information and opinion that would facilitate our life-affecting choices.

We may not like all of that speech. We may not like the results that we are allowed to achieve as a result of it, but we protect it all because it is of such great value to the democratic process.

Where does commercial speech come into that? Well, commercial speech, as I argued in my article in 1971, really facilitates a kind of private self-government. We have total control over basic choices involving our private lives. When we are making our governing decisions that Professor Meiklejohn was talking about, we have one-one-millionth of a say. When we make choices about our own private lives, we have 100 percent of the say. Therefore, at least as great a force of democratic thought underlies the protection of commercial expression.

Now, does that mean that the commercial speaker is not out to make money? Does that mean the commercial speaker is not trying to use certain persuasional techniques that appeal to noncognitive elements? No. All of that is true. But all of that is true for other kinds of speech as well.

Everything you heard on the last panel would be also true of political consultants. If you're old enough to remember the Willie Horton ad in 1988 by the first George Bush, if you think of what techniques Karl

Rove has used, or the Democrats themselves have techniques to this effect. There is always this kind of persuasional element. There are appeals to a motive and a rational or nonrational elements, yet what's the alternative? As Winston Churchill said, "Democracy is the worst form of government, except for all the others."

If we reject the notion that individuals have the basic decision-making power to govern their lives, we have basically conceded the morality of tyranny. We can't do that. Because we can't do it in the political realm, we don't do it in the commercial realm as well.

For example, if I asked all of you, does Consumer Reports deserve constitutional protection, I would imagine you would say it does. Yet, it's dealing with consumer products. It's not the "Cross of Gold" speech, or the "I Have a Dream" speech.

The recognition that Consumer Reports deserves constitutional protection is automatically inherently a recognition that information and opinion about commercial products and services is relevant to our self government.

Now, the response, I'm sure most of you are thinking it, Consumer Reports is objective. These commercial advertisers aren't. Well, transfer it to the

political process. Not all political advertisers are objective. People have agendas. They are allowed to promote it. Advocacy is not fraud. The mere fact that a speaker is advocating one side of a debate doesn't mean that they are tricking somebody or that there's necessarily a misleading aspect to their speech. We expect counterspeech to deal with the problem.

Now, where is the Supreme Court today? Well, the Supreme Court has given extensive protection to commercial speech, much more than I bet you are willing to imagine. In the case that David argued for the free speech side, the Virginia Board of Pharmacy case, in 1976, they gave a significant amount of protection to commercial speech, but in the last 15 years, it has been increased dramatically.

The government has not won a commercial speech case in the Supreme Court since before 1996. That rivals the Chicago Cubs for a losing streak.

(Laughter.)

MR. REDISH: Let me read you some of the things that the Supreme Court has said in the recent years. First, in that Virginia Board of Pharmacy case, the Supreme Court said this: "There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in

itself harmful, that people will perceive their own best interests if only are they well enough informed, and the best means to that end is to open the channels of communication rather than to close them. But the choice among these alternative approaches is not ours to make. It is precisely this kind of choice between the dangers of suppressing information and the dangers of its misuse if it is freely available, that the First Amendment makes for us."

In a later case, the 44 Liquor Mart case, the Court spoke of the "offensive assumption that the public will respond irrationally to the truth." "The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good." Think about the relevance of those statements to the kinds of issues we're talking about today.

Now, does that mean there are no alternatives? How about regulating the content of the food? It would seem to me that that would be an obvious choice. What you're not allowed to do is regulate behavior, to manipulate behavior through the selective suppression of information. You can require disclaimers, you can require warnings, and you can restrict speech aimed at a certain level of child. Where the Court is on the First

Amendment rights of children is not entirely clear, but the one thing that is clear, and I'll end with this, is you cannot reduce the adult population to the level of the sandbox.

Thank you.

(Applause.)

MR. VLADECK: Way to liven this up a little.

Tamara?

MS. PIETY: I couldn't tell whether you were asking me to go next or last. Okay. I had prepared a much longer piece, not taking the invocation seriously that it was five minutes. So, I'm going to try to do this very quickly, and a lot of things are probably going to be left out, but I want to make two points that are really, or perhaps three points really, really clearly, and that I hope will be the thing that you take away from this.

I want to commend, first, the FTC for convening this conference, and thank David for inviting me to do it, because this is a very serious problem, but Marty's talk just illustrated where we are. I have a quote from yesterday's Advertising Age about how they view sort of the problem, and I assume that the purpose of this panel is to investigate whether or not the First Amendment represents an obstacle to the regulation of advertising

directed at children, in light of the very grave health, not to say life, chances that we are talking about, and this is the life of our country.

It will come as no surprise to those familiar with my work when I say that no, the First Amendment should not represent any obstacle. Now, there are a number of things that Marty said. There are a number of things that go into this sort of conception of commercial speech this way that I don't have time to talk about, but here are the points I want to say.

First of all, marketing speech is about making a profit, not about making a point. Now, that does not mean that I have anything against making profits. I think commerce is great. I think making profits is great, but for markets to function well, they need information. Information, good information. In particular, to regulate commerce, we need to be able to regulate marketing. If we can't regulate marketing, we can't regulate commerce.

This is particularly important with respect to fraud. We have to be able to regulate fraud.

Secondly, a second category mistake is to treat corporate speakers the way you treat human beings, and to treat them as having expressive needs the same way that human beings do. Corporations are legal fictions.

They don't have expressive needs intrinsically. I think Professor Redish even alluded to this in his conception of governments. Likewise, corporations have the sort of speech rights, I would maintain, that are representative of the type of organization that it is. Corporate law, which I teach, distinguishes between types of corporations and gives to those corporations powers that they are given by law. So, it's a sort of a circular.

They have what powers we give them, under law. If we don't stop this trend that Professor Redish so eloquently expressed there, that since the last 15 years, what we will see is the attempt to use even the existing commercial speech doctrine against fraud claims, and to treat the commercial speech like New York Times versus Sullivan sort of libel, which would be effectively, even though we retain, and sort of genuflect in the direction of, how the First Amendment doesn't protect fraud, the practical import will be that it will protect fraud.

Let me give you an example of this. I am going to go very quickly through all of these slides, and none of these things I can actually say. These are some things from the tobacco case in Washington that was recently affirmed in the Second Circuit, but one of the reasons, or some of the reasons offered for protecting

commercial speech, which I'm not going to go into all of these.

(Laughter.)

MS. PIETY: David warned me that it's going to be very quick, so I am going to just go to the Kasky case, which most of you are probably familiar, the Nike v. Kasky case. So, in Nike v. Kasky, Exhibit A, the claim I just made, is about fraud. This is what the Nike v. Kasky case was about. I'm sure most of you are probably familiar with it, but we are not familiar with because it got misreported, widely misreported, and then repeated in some of the justice's opinions, is that this was a case in which the plaintiff pled fraud. Nike's response, a demurrer. You failed to state a cause of action. You don't have a cause of action for fraud. If we take this away, that's what the import of that was.

Now, the California Supreme Court eventually said, no, this case can go forward, but the trial court and the Court of Appeals in California agreed, the First Amendment would bar this claim, notwithstanding that Kasky alleged that there was fraud and deceit involved in that case.

So, let me go back for a moment to the corporate person. This is, I think, a mistake that arises from Santa Clara, but I think that there's also part of what

happened in the Commercial Speech Doctrine is something that we saw a blending from the election speech area, that is the strong statement of corporate personhood in Belotti got moved into the commercial speech case, and we began to see these sort of statements about the commercial speaker reiterated in the commercial speech case.

Now, the Virginia Pharmacy case that Marty refers to is one in which the Court focused on the listener, and sort of not being paternalistic about the listener and having the listener be able to make choices for himself about truthful information, but didn't talk about the speaker's right to speak the commercial speech, and indeed, retained the right to regulate. That's where we are now, right, in the Central Hudson world.

Belotti was a really strong statement about the corporation's right to speak as a corporation, although albeit stated in terms of this is the type of speech that must be protected. So, I predict to you that with Citizens United, that's being decided right now, is that what is valuable about that, even though it's theoretically political speech, is that it will be imported into the commercial speech context as a justification or a rationale for why we can't regulate

at all.

This problem is far too important. This is life or death, and so I'm going to go through -- life or death for me. One more minute.

So, the moral to the story is the extension of stronger speech rights to corporate entities will lead to the argument of fraud and irresponsible marketing or communication practices should be, must be, unavoidably have to be, shielded. We see these beyond food -- in Standard and Poor's response on the fraud claims on their bond rating and job marketing. If not now, when?

I would note, also, the may does not entail the shall, just because we can, doesn't mean we should or we will, but we shouldn't take it off the table.

I will leave you with the words of Justice Jackson, "Given the nature of this crisis, an interpretation of the First Amendment to disable us from responding to this in terms of marketing would turn the First Amendment into a suicide pact."

Thank you.

(Applause.)

MR. VLADECK: Dan, you're up next.

MR. JAFFE: Good morning. Good to see all of you. I want to very much thank the FTC. I wanted to thank David Vladeck for having me join this

distinguished panel.

I would like to just say one comment to the statement that was made a minute ago that it was said that marketing is all about making a profit, not about making a point. I'd like to make the point that that's a caricature, that, in fact, advertising makes many points and that was the key fact in the Virginia Pharmacy case, where they said that the public often is more concerned about some of the issues that marketing discusses than the most important political issues of the day. That is still the case.

I'm going to try to keep to David's five-minute rule, so I'm going to move forward.

The FTC should be congratulated for over three decades of protecting the First Amendment. Not only in the children's advertising area, but in the adult area as well. But that is going to be strongly challenged again in this environment.

Today's panel, to quote the famous political sage, Yogi Berra, "Like déjà vu all over again." We are truly experiencing a back-to-the-future moment, because as some of you in this room remember, but for those of you who don't, let me remind you that in 1978, the FTC launched a massive rule-making to determine whether to ban children's food advertising. After 60,000 pages of

submissions, and 6,000 pages of testimony, the FTC in 1981 came to the end of this rule-making road, when the FTC staff concluded that there did not appear to be any workable solution that the Commission could implement constitutionally, and as Marty Redish has pointed out, the constitutional protections have increased rather than decreased in the intervening time.

In 2004, Howard Beales, the former FTC director of the Bureau of Competition reviewed this whole rule-making and concluded, "Based on the history of FTC regulation of children's advertising, experience with the prior Kid Vid rule-making and current state of the law, one can only conclude that restricting truthful advertising is not the way to address the health concerns regarding obesity."

The FTC's own history and experience should be a beacon to guide us in regard to how to respond to these critical issues today.

The First Amendment discussion today is just not an academic abstract or theoretical issue. The advertising community faces real, clear and present threats of censorship, and massive censorship.

There's, unfortunately, a growing number of proposals from policymakers to tax, ban or severely restrict food marketing. To go down this road would be

very unfortunate and counterproductive, because it would divert attention from real solutions and head us eventually into a policy cul-de-sac, as we discovered back in the late 1970s.

Here we see the various strong standards that the Supreme Court has promulgated over the last 30 years with regard to the protections that advertising has under the Constitution. The Western States case makes clear, that is the strongest statement of the First Amendment protections, that if the First Amendment means anything, and this was a commercial speech case, it means that regulating speech must be a last, not first, resort.

The Western States case further makes clear that the First Amendment should not be perceived as merely a defense against government overreaching in regard to speech, instead, it sets clear parameters for government policy information, commanding that non-speech restrictive options need to be examined and found insufficient or inadequate before you turn to any speech approach.

Even where speech restrictive approaches might be permissible, and they certainly can be, certainly the FTC can stop any false, deceptive or unfair ads, the burden of proof is on the government to demonstrate that

these restrictions will work in a material manner. Here the research data, despite what you have heard earlier today, raises many serious questions. The IOM when it examined this issue could not find a causal connection between advertising and obesity.

For teenagers, paradoxically, advertising was found to be negatively associated with their food choices. We are far from helpless to effectively respond. Here is a list of just some of the options that the Institute of Medicine put forward as possible means for government to combat obesity, and none of them, as you will see up there, requires speech restrictions.

Unfortunately, when we discovered, and I hope that what we heard at the beginning of this forum is true, that there seems to be an inverse relationship between the level of complaint about and concern about obesity and government action. The government has been backing away, and I in my longer paper discuss this in some detail, from doing what is necessary. I hope that what Secretary Sebelius said is really a harbinger of a major change.

On the other hand, the ad community over the last nine years has launched a multibillion dollar, multifaceted approach to responding to the legitimate

concerns about obesity. That far exceeds even what we heard about this morning. We completely revamped our self-regulatory children's advertising review efforts. We launched a whole new food and beverage and restaurant advertising self-regulatory system for kids. We launch major new initiatives in response to public service advertising. That campaign has already reached over a half a billion dollars. We continue to work in these areas to push for new legislation for CDC programs on nutrition, and physical education, which are hardly available in half of our states. We will continue to push for other programs that work in the schools.

I'm almost done.

MR. VLADECK: Good, because your time is up.

(Laughter.)

MR. JAFFE: May I conclude?

Finally, I would like to end by noting that there is a disturbing new development. There has begun the efforts to try to expand advertising restrictions beyond those under 12, to teenagers. Never before in this country have we tried to treat 17-year-olds as they were seven-year-olds in regard to speech restrictions. To try to infantize teenagers is a very radical step. Clearly you can't claim that teenagers don't have the judgment or maturity to handle advertising and then turn

around and say that they can drive and shortly thereafter join the military, get married and vote. It's just not possible to place teenagers in impermeable cocoons until they somehow emerge magically mature at the age of 18.

Thank you.

(Applause.)

MR. YOSIFON: Thank you so much for this invitation to speak on this panel. It's truly an honor to be sitting on a panel with such illustrious academics.

The great legal theorist Roberta Unger likes to say that the task of the intellectual is to make the obvious explicit, so that we might be forced to grapple with that which we already in some sense know but have not yet treated rigorously.

So, what I want to do in the five minutes, four minutes and 45 seconds, that I have remaining, is to render a few statements that I think are relatively uncontroversial, to just line them up one after the other so that we might grapple with their implications, which might, indeed, be quite controversial.

Incidentally, because of the present setting, I thought it might be interesting to look for a pithy line with respect to what the task of the bureaucrat is. I

thought it would be funny maybe if I could say I looked for such a line, but couldn't find anything. But instead, I did find quite a bit, but none of it is really appropriate for polite company.

(Laughter.)

MR. YOSIFON: So, I will leave it to the bureaucrats to describe their own task.

So, I want to start off, we've heard a lot today said about the obesity epidemic. We saw some of the facts and figures that were described on the first panel, but I start off this slide by asking the obesity epidemic, question mark, because the very phrase implies that we have a problem, a problem that is in need of remedy.

But if we think about the way that we typically view competitive markets operating, we typically like to view the consumer as being served by markets, right? Food corporations and retail food corporations certainly are operating in highly competitive markets, and they're stumbling over one another in pursuit of profits, and the way that they achieve these profits on behalf of their shareholders is by discerning what it is that the consumer wants.

So, the process of market competition serves the consumer interest by discovering ever more subtly what

it is that she desires, and by providing it to her at an ever cheaper price. So, if you take this conventional conception of how competitive markets operate, you would have to change the obesity epidemic title to something like just the obesity circumstance, right, and the rates of overweight and obesity that we witness in our society are a felicitous result and are merely the consequence of consumers getting what it is that they desire.

It's this view of human behavior -- that humans have within them a set of privately ordered preferences -- that market actors in competitive environments discern. It's this conception of human behavior that really informs Professor Reddish's view, if I may, of the Commercial Speech Doctrine. The beautiful thing about advertising, operating in competitive markets, is that it allows profit-seeking corporations to inform consumers about their products, and to let consumers know that we've discovered what it is that you want, and here's the price that it's being offered at.

So, the Professor Reddish's view of commercial speech, and indeed the Supreme Court's view of commercial speech, broadly construed, is that it aids consumers in discovering what markets have to offer and it aids in the efficient operation of market competition.

The problem is that the social science has revealed to us that we human beings are, in fact, far more susceptible, for more vulnerable to situational influence in our cognitions, in our perceptions, than we intuitively think about ourselves, or that legal scholars or jurists or policymakers have typically taken us to be.

We've seen from the first panel today the myriad of ways in which marketers can manipulate consumer risk perception, exploit behavioral and neural techniques in such a fashion as to induce hunger rather than respond to a pre-existing consumer preference, but rather induce hunger or manipulate the consumer's perception of the risk.

So, and the truth is that alongside the beauty of markets, we have what I call the problem of power economics, which is that these very same profit-maximizing corporations operating in the context of competitive markets, on behalf of shareholders, as the shareholder primus in norm in corporate governance law requires them to do, firms are going to discover as much, if not more, about how humans actually think and behave and develop preferences and risk perceptions, as the social scientists who sat on our first panel will discover.

They'll do so even without any actual human beings sitting within the corporation having any conscious understanding or conscious intent to discover and discern the mechanisms of consumer manipulation, because the market will reward those corporations that even happen to stumble upon the mechanisms that were made explicit in the panel today.

We do, however, know that many corporations are well aware of these cognitive dynamics, which I don't have the time to get into.

Professor Redish, I misspelled your name on my slide, but I want to make the point, first of all, doctrinally, which really hasn't been made I think that explicit yet, which when we talk about the regulation of commercial speech, the Court has said that false and misleading speech is not entitled to protection, right? And once you've decided that the speech is not false or misleading, then we have this so-called intermediate standard, but as the other panelists have said, no court is ever willing to say that there is a substantial government interest in keeping truthful, non-misleading information from the public.

So, in my view, what we really need to do is to develop the first prong of the Central Hudson test and develop a more robust conception of what it means to

be false, and what it means to be misleading, such that advertising, falsely misleading advertising, would not fall within First Amendment protections.

I'll just wrap it up. So, my time is up, but maybe this can serve as a transition into the question and answer, maybe it serves as a question to Professor Redish, if I might. So, some say that imitation is the sincerest form of flattery. I think that's not right, I think critique must be the sincerest form of flattery, and as I told Professor Redish, when I wrote some of my earlier writing directly engages his scholarship, and I never dreamed that I would be so fortunate as to sit on a panel with him to be able to share some of these ideas.

So, I will put the question to Professor Redish and say where Professor Redish has argued in the past that we can't construe the First Amendment to allow the government conclusively to determine how citizens process information or when there's a fear of information overload dictates the need for government intervention. We can never be sure that such a point exists, much less that citizens have, in fact, reached it. But I ask you, Professor, whether as a consequence of emerging from the muck or having been cast out of the Garden, can we not be certain that we have limited

cognitive capacity, can we not be certain that such a point exists, and do we not need a conception of the First Amendment that can account for that reality?

(Applause.)

MR. VLADECK: We'll come to that. I have a number of questions that I want the panelists to answer in turn, and I want to keep these answers very brief. So, you have a minute. I want a reasoned, thoughtful response.

So, if one were to look at the sum total of the Supreme Court's commercial speech cases, the one thing that comes out crystal clear is that the doctrine is designed to protect the free flow of information to consumers so they can make reasoned choices about the products and services they want to purchase.

The emphasis is on information. Each of the cases the Court has decided, and Marty is right, it's been over a decade since the Court has struck down, has upheld a restraint on commercial speech, but in each of these cases, the issue related to information.

So, my question is this: The concern about children's advertising is that the ads are designed not to inform reason, but to overcome reason. These are not informational ads, these are emotional appeals. How should the First Amendment deal with those kinds of ads?

Let's just go down the panel.

So, Dan, you're up first.

MR. JAFFE: Well, first of all, I guess you have to accept that theory.

MR. VLADECK: Right, I get to ask the questions.

MR. JAFFE: Right, which I do not believe you can make that total generalization. But putting that to those ads which some might agree are noninformational, the only group that you would be concerned about would be kids, it would seem to me, because they would not be able to possibly deal with that issue, and that's why parents, I guess, were created by God.

So, for the kids who are eight and nine years old who can't fully understand the selling purposes of advertising, some people say it's low or some people say it's a little higher, parents are there to step in, kids can't drive themselves to the supermarket or to the quick service restaurant.

So, once you get past that, once you get to where people do understand the selling purposes of ads, the government should not be the national nanny, and the person who steps in to decide for the public how to deal with this information, which they're well able to deal with on their own.

MR. VLADECK: I'm not sure I heard a First

Amendment theory there.

Marty, do you want to add some theory to Dan's response?

MR. REDISH: Well, the reason that we protect commercial speech is that we don't approve of government engaging in paternalism through manipulation of information and opinion. The very idea that government can draw a distinction between what's informational and persuasional necessarily implies that government has the authority to protect citizens against the expression of opinion that will unduly or improperly influence their lawful choices.

If we're going to start making the assumption that we're all something out of B. F. Skinner or that we're all laboratory rats, the entire basis of the First Amendment disappears. In the area of political speech, I wouldn't dare think of allowing them to make those choices. In the area of commercial speech, the same DNA is going on. The same concern about government treating us all as children.

So, the very idea that that distinction can be drawn by the government is itself an affront to the basic notion of individual choice that the entire First Amendment, and indeed the democratic system, are premised on.

MR. VLADECK: Well, there's some theory. Thank you.

Tamara?

MS. PIETY: Well, I would say that under the First Amendment, it's appropriate to regulate for children's benefit, it is appropriate to be paternalistic towards children. Children don't have the faculty and are not accorded the sort of cognitive development that adults are, and so it's not clear to me why we haven't said that a long time ago.

Most of the autonomy arguments don't seem to have very much purchase with respect to children, and particularly very young children, but even older children, and I think the work that Professor Yosifon and many others, including Jon Hanson at Harvard and others, have done, Cass Sunstern, Richard Thaler, have illustrated for us that in many circumstances, there isn't any neutral stance from which we can choose.

There's going to be somebody doing what they call choice architecture, the question is do we, the people, our elected representatives, make that choice architecture, or do we want General Foods to make it? I didn't elect General Foods, I don't have any say on the board of directors of General Foods, and indeed, the shareholders don't have much.

So, that's what my response would be.

MR. YOSIFON: I think that the problem is not between informational and non-informational speech, I agree with Professor Redish, it's conceptually impossible, or very, very difficult to distinguish between what is informational or noninformational, what is informational, what is persuasive. The issue is whether the speech is false and misleading or whether it's truthful. Unless you want to eviscerate the false and misleading dimension to the commercial speech doctrine and say that even false and misleading speech is protected, then I think the question is: are the rhetorical appeals false and misleading?

Now, we have a doctrine of puffery in consumer protection law, and that has creeped into constitutional law, that says that when you have a magic clown, or expressions of sexuality associated with a product, that that's puffery, and it's not actionable as misleading speech, because no reasonable person, no rational person takes it seriously.

The $2 billion a year spent in advertising gives the lie to that doctrine of puffery, and so my view is that we need to take seriously what the social science is telling us about what effects magical clowns have on our perceptions of the consequences of consuming the

product.

MR. VLADECK: I'm not sure Professor Redish is going to be any happier with having social scientists make that choice than my colleagues at the FTC.

Let me change the question a bit. The Supreme Court has never really decided, though, there's some hints, perhaps in Lorillard, decided whether the Commercial Speech Doctrine applies in full force when you're dealing with advertisements directed at children.

Now, I want to put aside the Butler versus Michigan, the roasting, the burning down the house to roast the pig problem, when you have ads that are directed both at children and at adults. But where the ad is plainly targeted at children, not at their parents, what are your views about what, if any, First Amendment protection should be accorded to those ads, because I assume, and you can take issue with this, I assume you will take the position, as I think most scholars do, that protecting the health and welfare of children is a governmental interest of the highest order.

It's to all of you.

MR. JAFFE: You go first.

MR. REDISH: It's an area on the frontier of the First Amendment. When you deal with tobacco and

alcohol, it is unlawful for underaged individuals to engage in those activities, so promotion to them, the idea that they should take advantage of those products would be a promotion of unlawful activity, and that's absolutely outside of the First Amendment.

When you get to the area of cereals or other kinds of food, it is not unlawful for minors to use it. You have to remember that there still has to be an opportunity for the parents to hear about it, and if the ads are framed in certain ways that simultaneously appeal to children and parents, the fact remains the parents are going to be making the final decision.

I understand the concept of the nag factor, but if you're a parent that gives in to anything your kid nags about, obesity is only one of the problems you're going to have, and the adults are making many of those choices.

Now, there are First Amendment rights for minors, not necessarily young children, but they could wear anti-Vietnam War arm bands. There is a whole spate of recent cases about regulations of video games which have struck down restrictions aimed at minors. Where the First Amendment outer limits are for minors above the very young age has simply not been litigated fully.

MR. VLADECK: Tamara, do you want to go next?

MS. PIETY: Sure. Obviously, I think it is a frontier. Certainly there isn't any good, I think, theory that supports why we ought to permit that, particularly to the extent that we have the evidence of manipulation and we have, I think, a fair amount of evidence of manipulation.

So, what value sets against this sort of idea is not really the right to speak, and so I would just object a little to what Mr. Jaffe said. It's not really expression. It's the right to make Cheerios or Froot Loops, and then if you make it, to sell it. You have to market something, a lot of times, to sell it.

It's just like cigarettes are not illegal, alcohol is not illegal, what we saw in the context of a for-profit enterprise is that they will attempt to do whatever they have to do to market that thing, even to children, at the same time they're saying that they're not marketing.

MR. YOSIFON: I think it must be frustrating for non-lawyers in the audience to learn that there is no Supreme Court doctrine directly on point. This often is the case when you turn to an important problem in law. You find that there is no law.

So, I would just say that I think that the only thing I would add to the conversation is I think the

emerging challenge as courts are going to be required to confront this problem is, again, the science that we heard today suggesting that this radical distinction that we would like conventionally to make between children and adults or young children and adolescents seems to be breaking down, and that what we're learning is that the human mind, adults are subject to persuasion and manipulation in many of the same ways that children are.

So, I don't think that it's going to be easy to come up with a doctrine that distinguishes children radically from adults.

MR. REDISH: David, I have to ask you, would you feel the same way in the political area? Because the same dynamic is involved. So, is it okay to suppress political speech on the grounds that it might noncognitively influence people? I just want to see how far you extrapolate your point.

MR. YOSIFON: I would rest provisionally on the distinction that the Supreme Court has made between political speech and commercial speech and say that misleading and false political speech is entitled to First Amendment protection, but misleading and false commercial speech is not.

MR. REDISH: That's circular. I mean, I asked

you whether that distinction should be maintained, you can't respond by saying there's the distinction.

MR. YOSIFON: Then I would retreat to the hierarchy of First Amendment values and say that we have a greater interest in the free flow of expressive content with respect to social and political discourse than we do with respect to commercial discourse.

MR. VLADECK: I want to give Dan an opportunity to answer the last question and then I want to move on.

MR. JAFFE: One thing that I think is important is that those who claim that this advertising is false or deceptive are talking about the kinds of advertising that is used in all product categories. It's colors, pictures, illustrations. This is how advertising works, and it seems to me to say that if we're going to start saying that we can't have these ads to kids who can't buy these products themselves, because they are the ones who don't understand it, then you must be saying that these ads have no significance to adults.

I think that's just wrong. I think doctrinally wrong. So, you can't just get these nice little ideas that there's these kids who are living off in this world all by themselves without parents or without other people who are making decisions from them and we are going to protect them from themselves because they are

going to make the choice. They don't. Or they don't unless the parents allow them to.

Therefore, the communication is both to children and to adults, which is a very significant doctrinally-protected area by the Supreme Court. That's why they wouldn't allow, even in the tobacco area, or the alcohol area, where these products would be illegal for kids to be used to not allow that to be suppressed so that adults couldn't see those ads.

MR. VLADECK: So, we are going to move on to disclosures. You've mentioned the tobacco regime, and Dan was critical of efforts to categorically suppress speech. So, let's switch gears. Suppose the government were to adopt the same kind of disclosure regime that was adopted for tobacco. So, we would simply require foods that were marketed principally to kids that were high in fat, sugar, calories, sodium, to bear a warning that said something like this: Consuming foods of this kind contribute to obesity, Type 2 diabetes, heart disease, and all sorts of other things. What does the Constitution say about a disclosure regime like that?

Let's start with Tamara, because we're just going down the line.

MS. PIETY: Well, I guess I'm not so much concerned about what the Constitution says about a

disclosure regime like that because I don't think it forbids it, as I am about how effective it would be, but it's something we're looking at solutions, I think.

MR. VLADECK: Putting aside whether you think it's efficacious or not, I just want people's view on the constitutionality of a regime like that.

MS. PIETY: Particularly on the types of foods that we're talking about, yes, I think it would be, but I'm sure that there will be heated dispute.

MR. YOSIFON: I certainly think that it would be permissible as well. Maybe that's a circular argument as well to say that the Supreme Court would likely hold that it's permissible, and this is not at all out of the ordinary.

You can't market a security in General Mills. You can't say that General Mills is going to make you sexy and have magical powers if you buy stock in General Mills. The government requires you under the securities laws to give reams and reams of disclosures in connection with that speech, requiring similar speech in an area as important as food consumption as a security investment I think isn't Constitutionally problematic, but I guess I would put Professor Redish's question back to him and say would your theory of the First Amendment cause us to say that even misleading and false

commercial speech is protected?

MR. VLADECK: Let Dan get involved and then we'll give Marty the last word on this one.

MR. JAFFE: I think there's two interesting parts to your question. One, this type of disclosure regime, I would assume, is not directed to kids, because the question before that we had talked about how we have to protect kids from non-informational images.

MR. VLADECK: The question did suppose foods marketed to children, but I realize that that definition may be problematic.

MR. JAFFE: But when you put the disclosure in, I think what you're trying to do is to reach adults, which is a perfectly legitimate sort of thing, but it will be judged by the constitutional standard, does it directly advance a material interest, the burden on the government to show that.

MR. VLADECK: Is that your assertion that the disclosures are required to meet the same test?

MR. JAFFE: I believe that any kind of restriction on First Amendment speech, and I think the Supreme Court has said this as well. If there is a problem about the truthfulness of the ad, then you can obviously do either disclosures or bans to take care of it. If the ad is not false or deceptive, then if you're

going to regulate it under the Central Hudson test, the test is very clear that you have to show that whatever restrictions you're placing on that ad directly advance your purpose in a narrowly tailored manner.

MR. VLADECK: Marty?

MR. REDISH: I suppose you could put a disclosure that was aimed at kids specifically that said warning: This product will make you fat, and if you're fat, people won't like you.

MR. VLADECK: Or that you will die early.

MR. REDISH: No, they think they're immortal.

I don't think there's any doubt, and you mentioned earlier that the Supreme Court, and we could debate theoretically whether this is right or wrong, but there is not much doubt that they have been much softer on disclosure requirements or warnings than they've been on direct restrictions, and the theory is, well now we're giving more speech, more communication, so people have even more information to make choices rather than selective suppression.

There are still a couple of issues. One, is the information in the warning considered accurate, and who gets to make that choice is open to question. Two, this is coming up under the new tobacco law, does the warning take up so much of the packaging that it effectively

undermines the ability of the company to communicate.

I would like to say to David that referencing the securities laws really doesn't get you very far, because again, rightly or wrongly, the securities laws have just been assumed to be outside the First Amendment, and anything can be done in terms of government regulation of the securities laws without triggering the First Amendment. So, by that metaphor, we would end up having no protection at all in any area.

MR. VLADECK: Well, I'm sure the SEC is now relieved to hear that.

MS. PIETY: There are certainly some scholars who say that.

MR. VLADECK: Last question, and then we will open this up to the audience. One chip from the master settlement agreement that was entered into between the states and the tobacco, some of the tobacco companies. One of the regulations that has been debated, some would say it's been efficacious, some would not.

Suppose there was, and this would be government-imposed, as opposed to voluntarily assumed, but suppose there was a regulation that set a high nutritional standard for foods advertised on TV were more than a certain percentage of the audience, say one-third, were children between the age of let's say

two and 11? Sort of roughly modeled on some of the MSA provisions.

David, you go first on that one. Constitutional or not?

MR. YOSIFON: Well, I think that, as Professor Redish said, the Court has said that you can't reduce the level of discourse for adults to that level which exists in the sandbox. So, if a fifth or a third of the audience is children, meaning that the majority of the audience is going to be adults, I think that that would be problematic, which is why I think that we need, from my view, is that we need to be developing a robust conception of the permissibility of regulating commercial speech generally, rather than focusing in the area of children, because I think that it's not conceptually sound to do so.

MR. VLADECK: Dan?

MR. JAFFE: Well, to some extent, that was what the Lorillard case is a question of how high you raise the percentage.

MR. VLADECK: That's correct, yes.

MR. JAFFE: The Lorillard case said you couldn't have advertising within a thousand feet of schools or the perimeters of playgrounds, just for the same purpose of trying to protect kids, and the Supreme Court clearly

thought that was not okay.

MR. VLADECK: Five-four, I'm not sure clearly is the right adverb to use.

MR. JAFFE: The effective law as of now and we will find out again because this is going to be tested very specifically on the tobacco legislation that was passed by the Congress this year.

My guesstimate is that you are always going to be running into the problem of starting to restrict too much speech to adults. So, if there's a preponderance, a substantial preponderance of adults in the audience, I don't think you could do that.

MR. VLADECK: Marty?

MR. REDISH: I think it's dangerous to start using the MSAs as an analogy to the First Amendment, because there's no doubt the tobacco companies in exchange for valuable consideration were conceding some of their First Amendment rights. Their First Amendment rights I think go well beyond what they voluntarily agreed to in the MSA.

What you're talking about is what I call the dolphins and the tuna problem. How many dolphins are you allowed to get in when you're collecting the tuna? I think the Supreme Court in the Lorillard case, and I don't know whether it was five-four or eight to one, Dan

was right, the opinion of the majority was very clear, and that clearly is the controlling law and the four dissenters can go off on their own, I suppose.

Basically what they said is there is an element of proportionality that's involved. That the mere fact that there are some children exposed to the ads doesn't matter as long as the large majority of people being exposed to the ads are adults.

MR. VLADECK: Tamara, you're going to get the last word.

MS. PIETY: I think I would echo what Professor Yosifon said. I really think what we need to be doing is looking at commercial speech generally, but I also would say that this is a very, very, very complicated problem, it's a public health problem, you have to start on the ground somewhere with something, and children and the products marketed to children it seems to me a good place to start.

That sort of metric that kind of says, well, if you don't have enough children in the audience, then maybe it can shift over into a different kind of framework, I think highlights the real question that I wanted to propose, which is what is the value here of commercial speech? What's the value that we're giving to those adults that makes it important enough to say,

okay, now we can't impose these kinds of restrictions.

So, and I think I don't have enough time to talk about all the ways in which I think there are many empirically, theoretically problematic assumptions, but the principal one I think is this sort of assumption about the rational person and the rational chooser.

MR. VLADECK: I promised to leave some time for questions from the audience. We have about ten or 12 minutes.

JEFF CHESTER: Well, a far-reaching discussion, I really appreciate you having this discussion. Dan Jaffe described what I sort of call advertising 1.0. What I would like the panel to talk about, reflect on, is what David Britt and others talked about this morning, that you have an entirely new system that's really able to identify individuals, including children and teens, in an invisible nontransparent way, profile them by collecting lots of data in realtime, target them in a myriad of ways, and in particular, use techniques honed by neuroscience to directly affect them through their subconscious and conscious minds in the words of the advertisers directing it. What are the First Amendment issues for the best kind of contemporary digital marketing system? Thanks.

MR. VLADECK: Who wants to go first with that?

Dan, David? I mean, who?

MR. JAFFE: David, I will be glad to follow.

MS. PIETY: Well, I'll go first.

MR. JAFFE: Please.

MS. PIETY: Maybe because I don't think it's a First Amendment issue, but I think the question is really good for illustrating the question about market research. It's a permissible activity, right, and is it a speech activity? It's a business activity, but why are we allowing children to be basically human subjects in the research. I mean, we're doing research on human subjects without any sort of control. It's not clear to me why we would permit that generally, but with respect to children, and I do not see a First Amendment issue.

MR. VLADECK: Who wants to go next? Does anyone else want to respond? Because I wanted to refine the question when you're done.

MR. JAFFE: Why don't you refine the question now.

MR. VLADECK: Well, it seems to me that the question that is embedded there is whether this is advertising of the kind that Central Hudson is directed at, or is this the kind of in-person solicitation that really falls more closely into Ohralik/Primus, because these are tailored comments, at least as I understood

the question, directed to an individual, and if that conception is warranted, does it change the First Amendment calculus? Marty looks like he's shrinking, so I think we need to let Marty answer first.

MR. REDISH: The Ohralik case was about an ambulance-chasing attorney who went into somebody's hospital room and promoted himself for his services and the individual was in an extremely vulnerable state.

MR. VLADECK: But remember, the case was paired with Primus as well.

MR. REDISH: And Primus said that the First Amendment does apply when it's a communication that isn't quite in-person solicitation under those unique circumstances.

First of all, my instinct is to think that the language is too sweeping. That it's just as maybe the rational model is oversimplistic, the idea that we're all a bunch of automatons, I'm willing to bet, is overly simplistic. The fact that they profile us, assuming I've invaded some privacy rights, I don't find anything wrong with, because they might know what we like and we are allowed to make choices that way.

But most importantly, the danger is you're proving too much. Because the exact same thing goes on in the political process, and if we basically reject the

notion that individuals ultimately can make choices about whom they want to govern because we've decided that they're all just sheep, then we've basically thrown out the whole concept of democracy. If we're not going to throw it out in that realm, I don't see how we can throw it out in this realm.

We can't say we're all sheep when it comes to commercial ads, but that we're rational individuals when it comes to political choices.

MR. VLADECK: Anyone else on the panel want to add?

MR. YOSIFON: I just want to respond briefly and say that the idea that we can't draw distinctions, even with respect to constitutional protections, is in my view foreign to our constitutional tradition. You're not allowed to yell fire in a crowded theater. That doesn't mean that the entire First Amendment goes out the window. You're not allowed, as a lawyer, to solicit business in person. That doesn't mean that therefore there's no political speech. You're not allowed to lie when giving testimony in a courtroom or to disrupt an ongoing cross examination. That doesn't mean that political parties can therefore be regulated.

We draw all kinds of categorical distinctions, many of which no doubt we would universally agree are

acceptable. So, the very pursuit of categorical distinctions I don't think is threatening to the constitutional regime. We can argue about the wisdom of where we draw those lines, but the pursuit of it is done all the time.

MR. REDISH: But you're changing your empirical assumptions about what reality is. Professor Yosifon accused me in one of his articles about being obsessed with consistency, and I guess I have to plead guilty to that, and I can see why you wouldn't prefer a consistent system, because you're being completely inconsistent here. Either we are sheep or we're not. It's totally different from the situations you're distinguishing. These are situations where it's premised on a factual assumption, and --

MR. JAFFE: I thought we were bringing light to the situation.

MR. VLADECK: The prince of darkness.

MR. REDISH: I've been called worse. To make that shift, I think is just blatantly inconsistent.

MR. VLADECK: One last comment and then we need to get some of the other questioners involved.

MS. PIETY: I think that's a strawman, to say either we're sheep or we're rational. Obviously we're somewhere in the middle, and just like we have to draw

some lines in the Constitution, the lines that will create us, Professor Redish has so eloquently described as twilight zones, the fact that we can't think of in advance every, something, a theory, that will decide every case or every circumstance or easily put something in one category or another doesn't mean that in the face of a threat like this, that we shouldn't try to begin to act in certain ways, and there may be places where we get to some point where we say, all right, now this seems to look like this is too much intervention, but it seems like to throw up our hands and say we can't do anything at all is also not the appropriate response.

MR. VLADECK: This gentleman has had his hand up for a while.

MR. SILVERGLADE: Thank you, Bruce Silverglade, Director of Legal Affairs at the Center for Science in the Public Interest. I would like to just make a comment and then pose a question to Martin. Very quick comment, if you look at this from a level of 30,000 feet, the World Health Organization has made it very clear that restrictions of children's food marketing of high fat, high sugar, high salt foods is a top priority, along with product reformulations, better labeling, nutrition education, better school foods, better agriculture policies, but restrictions on marketing from

the World Health Organization standpoint after working with dozens and dozens of experts around the world looking at hundreds and hundreds of studies have come out with a formal policy calling for these kinds of restrictions.

So, while we have an impassioned defense of the First Amendment by Dan and Martin, it goes wholly against public health policy around the world.

Second --

MR. VLADECK: Is there a question?

MR. SILVERGLADE: Here's the question: The United Kingdom has instituted restrictions advertising of high salt, sugar and fat foods to children under 16. It's been in effect for two years. I haven't seen them slide into totalitarianism, they are still a democracy as I know.

MR. VLADECK: The panel is to address the First Amendment, and the WHO and the British have not adopted our First Amendment regime. So, is there a question?

MR. SILVERGLADE: The question, Martin, I'm going to play reverse law school and give you a Socratic question, if you pardon me, but is there any hypothetical situation that children, a child under six, watching a television show, directed to children, under six, in a day care center where parents are not present,

where the advertisement is for a cereal consisting of 50 percent sugar by weight, is there any situation where you can perceive that a restriction on that kind of marketing would pass First Amendment protections?

MR. REDISH: Sure. Advertising that is dominantly or predominantly aimed at really underaged children who we have decided aren't at the stage that can make those kinds of rational choices, I would have no doubt about it, that would be okay.

MR. VLADECK: Does anyone disagree with that answer?

(No response.)

MR. VLADECK: We have peace, finally. There's one question at the end.

MS. CAMPBELL: Hi, this is Angela Campbell from Georgetown Law. Professor Redish, you talked about in the political context how the remedy for sort of over-the-top advocacy would be more speech or counter speech, but I don't see how that can work in the commercial realm, because, unlike in the political system where you have multiple parties, there really isn't someone who has the counter advertising point of view.

So, I guess the question for all the panelists is, is there a remedy here that would involve more

speech rather than suppressing speech, and is the only person that can do that the government? Does that raise problems if the government does it, or are there other ways to get different points of view and would that be effective?

MR. JAFFE: Well, as I mentioned in my talk, there is about a half a billion dollars worth of expenditures by the Ad Council to talk about all sorts of issues that deal with the question of obesity, and how parents and children should respond to that issue. Certainly the government should weigh in, and unfortunately, they backed off because it was a VERB program where they were spending I believe about $100 million a year and they could certainly increase where they were talking about these issues.

So, I think that you can certainly get those ideas in. I think what I find really surprising and distressing is that no one believes that in this marketplace, that if parents and the public at large becomes concerned about obesity, that they will believe that that will not start creating pressures in the marketplace for companies to respond to that. In fact, there has been that type of pressure, and 10,000 products have been reformulated to try to meet these requirements. So, it's not as if the marketplace only

skews to hurting kids. If you listen to this discussion today, that's what you would come away with. That's just not an accurate picture.

The marketplace will respond to the legitimate concerns of people. Corporations may not be people, but they respond to people. That is how they make money. Unless you feel that they're so manipulative that they could just overwhelm the marketplace with ideas, they're going to try to respond to the legitimate concerns of people as they begin to discover them.

MR. VLADECK: Marty?

MR. REDISH: I'll just add that government, it is well recognized that government has its own right to speak and that government informational campaigns or disclosure requirements or warnings on packaging are perfectly permissible as a matter of free and open debate, rather than selective regulation through suppression.

MS. PIETY: I just want to echo this point about the not being an effective source of counterspeech, partly for commercial speech, because there's not an effective place for a profit motive to drive some of that, but I would support all sorts of solutions, including more speech and industry solutions and involvement from lots of different sectors. This is a

complicated problem and I think it probably has multiple solutions.

But this idea that corporations respond, I also want to say that I do not, I've been caricatured, sometimes, I do not have anything against corporations, I think corporations are great, but I think intrinsically their structure makes them sort of neutral. Like they have sort of amoral structure.

So, I don't think you can depend on them to respond appropriately in every circumstance, and very often the public has wanted these restrictions. It said, please, don't advertise to our kids. Don't put soda machines in the schools. Don't do this kind of advertising. Don't call me at home at dinner, the Do-Not-Call Registry. The industry has responded with lobbying efforts to shut that down.

So, when the public wants a particularly apparently paternalistic intervention that says, we would like you to do this for us, because we cannot do this adequately ourselves, it's systemic, that seems to me not to be paternalistic, it's paternalistic in the extreme to respond to that desire by saying, oh, no, no, no, you really want us to pitch to your kids, you don't know it, but it's good for them, it's good for them to keep saying no, tough love, they'll be better for it.

Even though you say you want it, we're not going to take you seriously.

MR. VLADECK: And I didn't ask for that pitch for the Do-Not-Call Program.

David, you have the last word.

MR. YOSIFON: Well, I would just say that I agree, it's certainly permissible, whether or not it's efficacious I guess remains to be seen. More speech is always desirable, but more listening isn't always possible, and I think that legal scholars and this country, our culture, our constitutional tradition, must ultimately grapple with the reality that we have limited cognitive capacity and we need to develop a conception of the First Amendment that is consistent with that biological reality, and the reality is that more speech is not always possible.

MR. VLADECK: I want to ask everyone to join me in thanking our panel for a very stimulating discussion.

(Applause.)

MR. VLADECK: Keith has some housekeeping announcements to make quickly.

MR. FENTONMILLER: We'll take a one-hour lunch break and reconvene at 1:30. Please take your belongings and also keep your sticky badges. You will have to go back through security. Thank you.

(Whereupon, at 12:30 p.m., a lunch recess was taken.)

AFTERNOON SESSION

(1:43 p.m.)

MR. FENTONMILLER: We're going to go ahead and get started and hopefully the people winding their way through security will filter in quietly and orderly.

Our next panel on self-regulatory initiatives is going to be moderated by the associate director for Advertising Practices, Mary?

MS. ENGLE: Good afternoon, everybody, I am Mary Engle, the director of the FTC's Division of Advertising Practices, and this first panel this afternoon is going to take a look at some of the initiatives that the food and media companies have taken of their own accord to help improve the landscape of food marketing to kids, both what's being marketed and how it's being marketed, and we will also hear some critiques of some of those efforts and some discussion about how well they may be working.

The panel here today, I am just going to briefly introduce them because you have the bios with you for their full background. We have Dr. Dale Kunkel, who is a professor of communication at the University of Arizona, Dr. Margo Wootan, director of nutrition policy at the Center For Science in the Public Interest, Dr. Elizabeth Taylor Quilliam, who is assistant

professor at the Department of Advertising, Public Relations and Retailing at Michigan State University, Jennifer Anopolsky, who is senior VP of corporate responsibility at the Walt Disney Company, Mary Sophos, who is senior VP and chief government affairs officer of the Grocery Manufacturers Association, and Elaine Kolish, who is vice president and director of the Children's Food and Beverage Advertising Initiative of the Council of Better Business Bureaus.

So, we're going to start with Dale.

DR. KUNKEL: Thank you very much. Welcome back.

I don't have time for much context, but I want to provide a very, very brief one here. As many of you know, I served on the Institute of Medicine Committee that was conducting a Congressionally-mandated study to evaluate the role of food marketing as a possible contributor to childhood obesity, and since I served on that committee for about two years, I have a relatively high degree of confidence in stating our conclusion, and our conclusion was that food marketing is a significant contributor to childhood obesity.

I heard some comments earlier today that I am not sure are completely consonant with that, but it absolutely is. It is a significant contributor. In fact, I will read you very briefly our quote from that

report, it says, "Food marketing to children is out of balance with a healthy diet and puts children's health at risk."

Now, as a result of that, the Institute of Medicine issued, as was mentioned earlier, a number of recommendations, but there's one that I am critically focused on, and that recommendation is if the food marketing industry could not, within the near term, reverse the predominance of low nutrient, high density food products in marketing to children, that Congress should regulate to achieve that goal.

The study I'm going to share with you today holds the industry accountable for whether or not or whether or not they have really achieved that with the Children's Food and Beverage Advertising Initiative.

The data that I'm going to report here today was gathered between February and April in a large-scale study of monitoring of advertising on children's programming, and so let's go directly to the results.

At the very first level, did the industry do what it promised to do. Now, it didn't make one promise, it actually made about 15 promises, while we were studying the Initiative, there were 15 different companies participating, each one has different nutritional criteria, different standards, and pledges,

and so did they adhere to that? Did they do what they said they would do?

Here's the simplest bar graph you will ever see at any presentation. It says that 100 percent of the advertising efforts by the pledge companies did comply exactly with their promise. So, there is perfect compliance with the pledge details.

So, that must be good news, and that must resolve the problem. Well, I don't view it that way. In fact, what I want to do, and what I do with this study, is I conduct an independent nutritional analysis of what this pledge program has accomplished in terms of shifting the overall marketing landscape. What's the nutritional quality of foods marketed to children under this initiative?

So, the next thing we need to do is define basically how we're going to conduct that analysis. You heard from Secretary Sebelius this morning, the Department of Health and Human Services has a food rating scheme, it's a public information program to inform American parents about what are the appropriate foods to buy and feed to their families. It has three categories, the first is "Go" foods that are healthy, rich in nutrients and relatively low in calories. They can be eaten any time. "Slow" foods, foods that have

some nutritional value, but are a little bit higher in fat, salts and sugars, should only be consumed in moderation. Finally, "whoa" products, products that are high in fat, salts and sugar, pose the highest risk of obesity, and should be eaten only once in a while, or on special occasions.

So, I've analyzed, and this first slide here reports data from a study I've previously published. This is how the children's food marketing landscape looked in the year 2005, that was before this controversy had really mushroomed, that was before the self-regulatory initiative began, and so you can see this is the context that we started with. Nutritionally poor food ads predominate. It's 84 percent of the foods marketed to children on television are in this category that says they're unhealthy when consumed in abundance.

Now, the next slide I'm going to show you is actually the most important slide in the entire study, because it documents what's the shift as a result of the industry's Initiative. If the industry's Initiative was as effective as we hope it would be, then that would be a complete reversal, like a giant teeter-totter, the "Go" percentage should shoot way up and the "Whoa" percentage should shoot way down.

Let's see what we find. What we find is modest

movement in the desired direction. Very modest. The proportion of foods that are rated in the poorest nutritional category has diminished from 84 to 72 and a half percent, but the conclusion is that nutritionally poor foods still predominate. In fact, even though the industry is complying with all their pledges, we now see that roughly three out of four foods that are marketed on television to children are in the "Whoa" category, they should not be consumed on a regular basis.

Also note, on the far right side of this chart, that "Go" foods are barely visible. Let's look at that a little more closely with another slide.

This slide depicts what a child would see if they watched ten hours of children's programming. In ten hours of children's programming, you would see 76 food ads, 55 of those 76 would be for products in the poorest nutritional category, 20 would be "Slow" products, these are products that have some nutritional value, but a child would have to watch ten hours of children's programming before they would see one ad for a healthy food product. The conclusion here is that healthy food advertising is invisible.

Now, not all companies that advertise food to children participate in self-regulation. This pie depicts the distribution of the advertising environment

that's accounted for by self-regulation, it's roughly 70 percent, about 30, if you want to be technical, 29 percent here of the ads that appear during children's programming are from non-pledge companies, so that means that more than a quarter of the food ads that are airing on TV to children are from non-pledge companies. All of this advertising is not subject to any of the policies or pledges that the CFBAI program employs.

So, the next thing that we want to do, then, is we want to compare how do pledge companies look as compared to non-pledge companies in their nutritional profile.

So, what you see here, first, is the pledge company, nutritional profile, now when we only look at pledge companies, we see it's 68 and a half percent of foods that they advertise are in the poorest nutritional category, or a little more than two out of every three ads. They have then the other third is "Slow" foods. If you compare that to the non-pledge participants, the non-pledge participants have a little higher proportion of the unhealthy food products, and I'll bring those bars together so you can see the comparison more directly, 68 and a half to 82.9.

So, we can conclude that the pledge companies are doing a slightly better job by showing a little bit

lower proportion of "Whoa" food ads, but they're still showing two out of three ads for products that are in the poorest nutritional category.

Finally, we want to deal with licensed characters. Licensed characters, I know there are a lot of people here from media companies, there are a lot of people here from advertising companies that use licensed characters to promote products to children. This is a sensitive topic, and the reason why is young children in particular have unique trust and they have a parasocial relationship with characters like Sponge Bob and so forth, and so these ads are particularly powerful.

So, what we want to see is are they being used to market healthy foods to children, are they being used to market poor nutritional quality foods to children.

One of the first findings that we see here is that the use of licensed characters has actually increased under self-regulation. The percentage has nearly doubled from 2005 to 2009. I don't know, this may well be a more widespread pattern across the ad environment, but in that context, with an increased use of licensed characters, then we've got to remember that the Institute of Medicine recommended in its 2006 report that licensed characters should only be used to promote healthy foods -- not healthier foods than used to be

advertised, healthy foods.

What do we see in our data show that roughly half of all of the ads featuring licensed characters promote foods in the poorest nutritional quality category.

In sum, the food marketing industry is overweight, but they have chosen a diet that won't lose the pounds the doctor prescribed. Removing a small proportion of the sugar and calories in a cookie or a cereal product doesn't make it a healthy choice, no matter what label the industry chooses to invent, such as the so-called better-for-you foods, or what nutritional standards are applied. Whether the count is 1.6 or 10, the industry is spending billions of dollars to entice children down the path toward obesity. It's outrageous, and it can't be allowed to continue.

As Senator Tom Harkin said in his statement about my study in a press release yesterday, "When private interests work against the public good, government is obliged to act. It's past time for the Federal Trade Commission to size things up and it's time to get moving on a real solution. At the present rate of reform, we'll have unhealthy food advertising off of the airwaves by 2033. We can't afford to wait that long."

Thank you.

(Applause.)

MS. WOOTAN: Great. Well, Dale, I'm glad you put some context to everything, because with only ten minutes, I'm just going to cut right to it. Is self-regulation working? Unfortunately, the answer is clearly no. As a mom, looking at what's marketed to my child and other children, and as a public health professional doing studies looking at what's being marketed to kids, clearly as self-regulation is currently being practiced, self-regulation is not working. Still the overwhelming majority of products that are marketed to kids are still for foods that are unhealthy, too high in fat and salt and sugars with not enough key nutrients.

So, one of the key problems with the current self-regulatory system is that not all companies belong, that a number of food manufacturers have joined the CBBB, Children's Food and Beverage Advertising Initiative, but many food manufacturers are still missing. A number of key manufacturers that market their products to kids.

Also, restaurants are not doing so well. Actually, the food manufacturers are doing much better than restaurants. So far, only two restaurant chains

belong to the CBBB initiative. Entertainment companies are doing even worse.

Now, one thing that companies are telling us is that we don't market to kids, so we don't need a policy. So, some companies that we've approached and encouraged them to join the CBBB initiative have said, no, we don't market. It's true that most of these companies, though not all of them, don't advertise during children's television, but that doesn't mean they don't market. They still are doing lots of other kinds of marketing. They have children's menus, children's meals, birthday clubs, they have advergames on their website, whole children sections. They have programs like the Book-It Program and other promotional programs in school. They have branded fundraisers in schools. They're marketing to kids in lots of other ways.

So, even if a company doesn't advertise on TV doesn't mean that they shouldn't have a policy, and many of these companies are not doing their part.

As I mentioned, entertainment companies are particularly missing in action, where entertainment companies have done the most is in setting nutrition standards for the use of their licensed characters, and a number of the big companies have. A few other companies have gone further, like Qubo, which has a

comprehensive policy with nutrition standards for all their marketing to kids. Other companies are in between, maybe covering some aspects of their marketing, but it's essential for the entertainment companies to have policies that cover not only the use of their licensed characters, but all of the ways that they are communicating with kids about food, through television, first and foremost, radio, magazines, their websites and all the other innovative ways that they are marketing to kids.

The companies that do have policies generally are covering the traditional media. They have policies for television and radio and print, for the food and restaurant companies, but still, there are a number of the ways that they are marketing to kids aren't covered. I gave a few examples here, policies tend to be weaker for on-package promotions, many companies don't have policies at all for on-package marketing.

In schools, marketing through toys, like this Pizza Hut toy set here, through the use of company logos, product names and other branded information on T-shirts and cereal bowls, and new media, as we heard about this morning, from Dr. Montgomery, cell phones and social networking. There are lots and lots of ways that companies are reaching out to children, encouraging them

to eat their products, but many company policies fall short in covering the full range of the media that they are using.

On-package marketing is particularly problematic. A few companies have good policies, but many policies are weak in this area, and there's lots of on-package marketing. Not only the use of licensed characters, but the company's own equity characters, contests, games, promotions of their websites, toy give-aways, you know, often times on-package marketing involves many different types of marketing on just a single item.

Policies on food marketing in schools are particularly problematic. One of the reasons for this is that many of the food companies are using the bare minimum principles that are laid out in the CBBB Children's Food and Beverage Advertising Initiative. While CFBAI does ask companies to limit certain types of advertising in school, it seems to me that its program has more holes than it has covering different kinds of marketing.

This is hard to read, but you can see there are some types of direct advertising, like posters or tray liners or branded curricula that aren't allowed under the CFBAI program, but there's lots of other ways that

companies can still market in elementary schools. The exterior of the vending machines, menu boards, branded displays. Some things don't even make any sense, like a tray liner can't be used to market a product to kids unless you also happen to sell that product in schools. So, if you're selling the junk food in schools, it's okay to also market that product in schools.

So, this framework for self-regulation in schools has no chance of being successful, given what's covered and what's not covered. Equally problematic, it only applies to elementary schools, it doesn't apply to middle and high schools, and I think most companies have agreed that schools are a special space where kids need additional protections. I think a lot of parents have more trouble feeding their kids healthfully as they get older in middle and high schools.

Now, some companies' policies limit the marketing of all their products. So, certain companies have agreed not to advertise any of their products to children, in the way that they define advertising and marketing. Most other companies set nutrition standards for what they will and won't market to children. The companies generally have pretty good standards for saturated fat, trans fat and portion sizes or calories, but the policies are not as strong for sodium, for

sugars, and also ensuring that the food contains some positive nutritional benefit. That the product is not only devoid of the bad stuff, but also provides some positive nutrition to the children.

Now, if you look at these standards, and we have this huge grid on our website with all these different nutritional standards, it's very complicated to try to keep track of which company has which standards. But there's a lot of similarities between them, but if you look closely, there are a lot of strategic weaknesses, or loopholes.

So, for example, a number of the cereal manufacturers have weak sugar standards, but pretty good sodium standards, whereas McDonald's has no sodium standard, but great sugar standards.

So, if you look at these standards, you see what some of the problems are. One of the key reasons why Dale and others are finding so many ads for foods with poor nutritional quality are these strategic differences between the companies' nutrition standards.

So, we did a study recently, and we looked at all the products that CBBB-participating companies had approved as appropriate to market to children, and we used the list that was available in January of 2009. We compared those against a single nutrition standard, the

one that the Center for Science in the Public Interest has developed. We found that 60 percent of the company-approved products did not meet our nutrition standards, because of these weaknesses in the standard.

So, one key problem is the lack of a consistent nutrition standard, which the FTC recommended last year, and which many advocates have been calling for, that having a single strong nutrition standard would change what's marketed to kids quite a bit.

We look forward to hearing what the Interagency Working Group on Food Marketed to Children has to say about this. We hope it will provide a good model for companies to follow.

We also have done a study looking at doing a content analysis, looking at how self-regulation has impacted what's advertised to children on Nickelodeon, and I think it's remarkable, Dale, that Dale and I came at this with different nutrition standards, different approach, different sample, and we found almost the same thing, that between 2005, before the self-regulatory program, and 2009, after most of the pledges had been put into place, we did find a modest decrease in the number of ads for unhealthy foods on Nickelodeon. But that effect was very modest. Very modest.

So, in 2005, about 90 percent of the ads were

for foods of poor nutritional quality, and in 2009, it went down to 80 percent.

So, it's good to see some progress, that gives me some hope, but it's clearly not enough progress, given the magnitude of the obesity problem, and just generally children's poor diets.

So, I'll just sum up by making some recommendations. I think that self-regulation can work. I know Elaine is feeling like I'm no longer the supporter of the CFBAI, but we see there's some infrastructure, there's some promise, there's some hope, but it's not playing out in the marketplace. I mean, I really feel like as a mom I've hardly seen any difference in what's being marketed to children, but I think with some changes, that it could be much stronger.

One thing is that all companies need to have a marketing policy. Food and beverage manufacturers, chain restaurants, entertainment companies, anyone who is talking to kids, marketing to kids, promoting food to children. Those marketing policies need to cover all their marketing, and not just TV, not just traditional media, but any way that the companies are talking. Entertainment companies, particularly, need to do more, it's not enough to just cover licensed characters, we need to cover full range.

Companies need to have a strong definition of what they consider to be kid-directed marketing, that there's a lot of differences between companies. We need for companies to adopt a common set of nutrition standards, and I would encourage all companies that are marketing to children to join the CBBB's Children Food and Beverage Advertising Initiative. This does provide an infrastructure that if you look at the policies of different companies, the companies that belong to the CFBAI have clearer, stronger policies. For policymakers, for parents, for advocates, it's nice to have them all in one place. For some companies, it's impossible to track down what they're actually doing. This way, it's right on Elaine's website. If I have a question, I can bug her, which I do all the time. What does this mean, this doesn't seem to fit. They are doing some monitoring. It would be very helpful to set up a track within the program for entertainment companies, so that there could be the same kind of monitoring and accountability and availability of the policies.

So, I think with these changes, perhaps self-regulation can work, but right now, it isn't, and this needs to happen in a reasonable time table. I feel like we first called on companies to be responsible

marketing to kids a long time ago. For Mike, it was 40 years ago, for me it was about ten years ago. We came out with our guidelines for responsible food marketing about five years ago. We did our first more recent big report on food marketing about seven years ago. Companies have had a long time. Given the magnitude of these problems, we can't wait ten more years to let self-regulation work.

I think advocates are getting restless, and if something significant doesn't happen in the next year or two, I think we're going to be going to Congress and to regulatory agencies to look for the government to fix this problem if companies can't.

Thank you.

(Applause.)

MS. QUILLIAM: Good afternoon. I'm Liz Taylor Quilliam from Michigan State University. I would like to thank the FTC for inviting me to participate. I'm very honored to be part of this panel.

I'm going to be talking about one specific marketing technique that Margo mentioned and that Dick Mizerski talked about this morning, and that's advergames, which Dick identified as a type of masked marketing. The study that I'm going to report was conducted with some of my colleagues at Michigan State,

Drs. Mira Lee and Richard Cole, who are with me here today, and Mikyoung Kim. Our data was collected earlier this year, spring and summer of 2009.

I will first discuss briefly what are advergames, in case you aren't familiar with the term, and talk about how they can persuade children. Then I'll look at two specific pertinent self-regulatory guidelines the food industry has that apply to digital interactive online games, and what we found in our study.

Advergames are defined as branded custom casual interactive games. A key factor that identifies an online game as an advergame is that it incorporates some type of brand identifier. That could be an advertisement as a billboard in the background of a game, a brand trade character used in the game, pictures of products, packages, the food itself, sometimes as tools that are used by the game players or as items that need to be collected to earn points and advance in the game.

So, here, for example, you see the Postopia website as a portal to enter a number of different advergames. This is a screenshot of one particular game. I would have put the game up to play it, except that I am not any good at it at all. Young kids are

much better at playing these type of games than old folks like me.

But in this game, we see Lucky Leprechaun, the trade character for Lucky Charms cereal, and the objective of the game is to help Lucky collect as many mini charms as possible. The more mini charms Lucky collects, the more points that the game player earns, and the higher the game player advances. It also is explicitly tied into the brand and to the product, because on the entry page to this game, there's a picture of the package with instructions to the game player to enter a code from the package in order to get a bonus.

Now, the charms, the tokens, that Lucky is collecting, look just like the marshmallow candies in the cereal. So the more marshmallow candy icons that are collected, the better the player does in playing the game. As you can see by this example, kids get actively engaged with the brand while they're playing.

What we know of advergames from prior research. First of all, several studies have identified how prevalent these games are, including one of our earlier studies that was published in the Journal of Consumer Affairs earlier this year. Advergames are used extensively to promote food products to children, and in

those previous studies, which predate the Initiative, we found, as did others, that the majority of the food advergames promoted foods that were high calorie, low nutritional value.

They also integrated brand identifiers as active game components, allowing children to virtually play with the food products in the game. There have also been a couple of studies, we heard one in detail this morning, that showed that advergames can influence children's food preferences and choices, and this goes for healthy as well as unhealthy foods. In fact, the Pempek and Calvert study showed that children who played a game with a more healthy food were more likely to want that food choice.

How do advergames influence children and why do they matter? Well, they have the potential to be particularly persuasive, especially for children that have difficulty distinguishing between entertainment and advertising. Because these games actually combine the two. So, the distinction that we would normally see between a television program and a commercial is more difficult to identify in an advergame.

That leads to the first self-regulatory guideline that we thought was of interest in this particular environment, the Children's Advertising

Review Unit guideline directly references this by calling on advertisers to make sure the children know their interactive games are advertisements.

The second guideline of interest is in the Initiative, with respect to interactive games, that Initiative companies will incorporate either products that represent healthy dietary choices, or healthy lifestyle messaging in their games.

We thought it would be reasonable to expect, then, that the Initiative companies would be significantly ahead of other companies with respect to their performance of these particular guidelines. So, we conducted a study and compared Initiative and non-Initiative company performance. We looked at the number of food advergames, we looked at whether the games contained or were preceded by advertising disclaimers. We looked for healthy lifestyle messaging, and using external nutrition standards we also examined the proportion of healthy versus unhealthy foods that we found in advergames.

Finally, for the Initiative companies only, we wanted to find out whether there were better-for-you products or not. Clearly the non-Initiative companies have no better-for-you products lists to explore.

To do this, we located 446 games on the websites

of major food manufacturers, fast food restaurant and family restaurants. There is no list of advergames nor a comprehensive list of websites targeted to children. Since we looked at the entire landscape, we applied the same decision rules to both Initiative and non-Initiative companies in identifying games on websites.

We took a random sample of half of those 446 games for our analysis, and after we eliminated non-advergame activities, things that weren't interactive, or that didn't have brand identifiers in them, we also eliminated games that were not available for the whole duration of our study. Some of the games were when we started, but were not by August. Games that clearly targeted adults. We took those out and we ended up with a sample of 146 advergames.

We gathered nutrition data from the nutrition facts labels and applied the nutrition standards for foods in schools guidelines that Jennifer Harris uses in a study published earlier this year.

What we found with respect to disclaimers is that the Initiative companies were, in fact, significantly more likely to indicate that their advergames were advertising, but that was only 63 percent of the games that we studied. So, there were

still a third of the games that did not have advertising disclaimers.

We also found, overall, that only 37 percent of the advergames we studied included explicit healthy lifestyle messaging, and there was no significant difference between the companies.

When we looked at the list, the published list of better-for-you products and healthy lifestyle messaging in Initiative company games, we found that 30 percent of the games featured better-for-you products only, another seven and a half percent had healthy lifestyle messaging, 16 and a half percent had both. But that still left, as you can see on the bar, nearly half of the games that we studied without either healthy lifestyle messaging or better-for-you products.

Now, the base for these were games that had identifiable products. So, if it was only an umbrella brand, that's not included. We were only looking specifically here at the products.

When we applied the nutrition standards for foods in schools, we found that 83 percent of the identified food products would be unhealthy, 36 percent high in sugar, next highest was fat, also high in sodium and calories. We found a significant difference here between Initiative and non-Initiative companies, but in

the opposite direction of what we expected. We found that Initiative companies had healthy versus unhealthy foods in just under 12 percent of their games, where the non-participating companies had about a third of their games with healthy food products.

So, quick recap, since I have one minute left. CFBAI advergames were more likely to include a greater proportion of unhealthy versus healthy foods. That better-for-you products and healthy lifestyle messaging were not present in about half of their advergames, but we did find that the four companies that pledged to refrain from advertising directed to children did not have games targeted to children with unhealthy food products. Also, we did find that the Initiative companies were more likely to identify the games as advertising.

Our conclusions pretty much mirror what you've just heard from Dale and Margo, that where there has been some progress, there are still some substantial gaps, at least with respect to online games. We would like to see some standardized definitions of media directed to children, particularly with websites. Short of purchasing syndicated data or getting proprietary data from the companies, there's no way that we know other than our type of content analysis to find out what

games are available for children online, and similarly, this huge variety of nutrition standards in the better-for-you products area makes it very difficult for not just scholars, but for parents as well to understand what is the content of those products that children are virtually playing with in the games.

So, in summary, we found no clear evidence that interactive online games are promoting healthy dietary choices or healthy lifestyles.

I would like to also give special thanks to the W. K. Kellogg Foundation for their grant to help fund part of this research, and to our research assistants and the Federal Trade Commission. Thank you.

(Applause.)

MS. ANOPOLSKY: Hi, I'm Jennifer Anopolsky from The Walt Disney Company. I want to thank you for having me here today to provide an update on our efforts to promote healthier lifestyles for kids and families.

You've heard a lot today from other people about what the media and entertainment industry has done or hasn't done, and I'm pleased to be able to tell you what we're doing at Disney, personally.

Children have always been at the heart of what we do at the Walt Disney Company, we care about them deeply, and this is an area that we care very much

about.

I last addressed this group in 2006, when Disney made a pioneering commitment to associate our brands and characters with a healthier and more nutritious portfolio of foods, and at the time we also announced industry-leading nutritional guidelines to ground our efforts.

So, today, what I would like to do is to provide an update on our progress. I think what you will see is that we have come a long way by applying what we do best at Disney. Our best strength and our best creativity to this area. We also know that there's still so much more that we can do as a company as part of our long-term commitment, and that there's much more that the industry can do overall.

First, a refresher on our nutritional guidelines that have helped transform how our Disney characters are used on food products. They were developed with the help of top health experts Dr. Keith Ayoob and Dr. Jim Hill, and they are based on the USDA's Dietary Guidelines for Americans. They are organized by key meal occasion, and include specific limits for calories, fat, saturated fat, sodium and sugar per portion, per meal occasion. At the time, we also committed to zero grams added trans fat across the board.

Now, I'm pleased to report that the guidelines that we announced in 2006 are now rolled out globally, not just in America, but in all the markets where Disney does business around the world.

So, here I want to show you just a few examples of some of our everyday foods that are in the market now that meet our guidelines. From low-fat dairy, you will see up there some yogurt and some milk, to fruits and vegetables. These are now widely available and are a really easy choice for parents and kids to agree on. We are really proud to have brought these new food solutions to market, and to families, to help them eat better at home.

I'm also pleased to tell you that we have reached a really important goal that we announced back in 2006, and now ordinary food items like that that meet our guidelines account for 85 percent of all our Disney branded foods that are in the marketplace. That was a big milestone. The remaining 15 percent includes items such as birthday cakes and seasonal sweets and treats and things like that that families expect Disney to have in the marketplace as they celebrate special occasions as a family.

Across all of the food items, our everyday foods and our treats, we have phased out added trans fats

across the portfolio.

Now, fruits and vegetables have been a really big focus for us and there are now more than 80 varieties of Disney-branded fruits and vegetables in the marketplace, such as the ones shown here. They are available at price parity to other produce in the market, and just in 2009, we've sold more than half a billion servings of fresh fruits and vegetables in the U.S. Considering that we were not even in this business five years ago, it's pretty extraordinary. These types of items are really being purchased by average families across the board.

Now, most of you should be able to find these at your local grocery store, but one of the things we're doing now is really focused on broadening distribution even further.

In our parks and resorts, the focus has been a little bit different, and here our approach has been to make healthier eating options more available and appealing throughout the Disney park and resort experience. So, back in 2006, we announced that our standard kids meal program would be changing. So, you know the typical kids meal out there in the marketplace typically includes fries and a soda as a side and beverage. Since 2006, we have changed our program, and

our bundle kids meals all come with a healthy side dish, like a fruit or vegetable, and either juice, water or milk to drink. That's the default. If you don't ask for anything else, that's just what it's going to come with. The program has been really successful and we have rolled that out globally as well.

Throughout our parks and resorts, we have also made healthier snack foods, like you see, the fruit stand here, much more widely available and appealing to our guests. As well as adding new healthy snacks such as the fruit and nut snack that you see there, all in resealable containers that make it really easy for our guests to have a small snack and save the rest for later.

Turning now to our media networks, as you may know, Disney Channel is a commercial-free platform, but it does accept some brand sponsorship messaging from both non-foods and also foods that meet our very same guidelines that I mentioned earlier. Pre-existing contracts notwithstanding, any contracts we had before we announced the guidelines may still be in place.

On our other kids media outlets, we accept regular advertising from a variety of food and non-food products that comply with our regulatory standards and practices.

Now, on the media side, as a broader industry-wide issue, we continue to expect things to evolve in this area. As different efforts are made by food marketers and grocery manufacturers and the BBB food pledge will all continue to evolve and that will also have an impact on what's shown on our airwaves. Of course we will also continue to follow the guidelines from the Children's Advertising Review Unit.

Turning now to our programming, we know that our Disney characters can have a really positive influence, and we really do make a concerted effort to use our very best talent to promote a range of pro-social topics. If you've been watching Disney Channel lately, I'm sure there are many parents in the audience, you may have seen something called Disney Friends For Change, with messaging that helps kids help the environment. Or maybe you've seen an episode of Handy Manny that reinforces healthy habits for preventing the flu this season. Coming soon in January, we will be debuting a new campaign that's in development right now with Common Sense Media that focuses on online safety. These are things that we do all the time and maybe you don't see them.

So, what I wanted to do is share with you some of the healthy lifestyle messages that are on our

airwaves, they've been on for many years, and they tend to not get reflected in advertising studies such as you've heard about earlier today from Dale, because they don't run during commercial time. They run during our programming time. Because Disney Channel tends to get excluded from those things because we're not a regular advertising network.

So, just a quick sample that I would like to share with you.

(Whereupon, the Disney announcements were played before the forum.)

MS. ANOPOLSKY: So, content like this that features our top talent, like the Jonas Brothers, is a really important contribution, and it's one we're really proud to make. I hope you enjoyed watching that.

We also work with groups like the Ad Council to promote healthy lifestyle education for families, and I want to show you a recent example from one campaign.

(Whereupon, the Ad Council campaign was played before the forum.)

MS. ANOPOLSKY: So, I've been asked to keep my remarks brief, so to learn more about what we're doing in this area, or to see more of our content, you can find it online at our corporate responsibility report at disney.com/crreport.

In closing, I want to thank all of you for taking interest in our progress as a company, and for inviting us to share and update on the work that we've been doing. At Disney, we will continue to promote good nutrition and healthy lifestyles to kids using our very best talents and abilities, and we look forward to reporting back to you.

Thank you.

(Applause.)

MS. SOPHOS: Good afternoon, I'm Mary Sophos, with the Grocery Manufacturers Association, and I'm delighted to be here this afternoon to provide an update on the advertising trends since our last report at the FTC Forum, and to discuss some very promising initiatives that we're taking in schools, in the workplace, in the marketplace and the media that we think will make a very positive contribution to our goal of reversing the trends in childhood obesity.

First, let me quickly highlight some of the findings in our report on advertising trends, and these are based on Nielsen data that we've been tracking since 2004. As you can see, overall advertising viewed by children, whether on kids TV or all TV, has declined in 2008, just as it did in 2007. In 2008, on children's TV, the typical child saw 14 percent fewer food and

beverage ads, and eight percent fewer food, beverage and restaurant ads.

This is a decline that began in 1977, and from 2004 to 2008, children viewed 31 percent fewer food, beverage and restaurant ads on children's programming, and 15 percent fewer on all TV.

The second noteworthy thing about these trends is the continuation of the shift and mix of products advertised. As you can see, soft drinks, both regular and diet, have disappeared almost entirely from children's TV. Sugared fruit drinks advertised on children's TV have declined by almost 50 percent. On the other hand, fruit and vegetable juices have increased over 150 percent, albeit from a very small base. This same trend is observed for bottled water, both in advertising seen by kids on children's TV, and on all TV.

The shift and mix continues with significant declines in categories, including cookies, snack bars, candy, gum and mints. In the case of cookies and snack bars, the decline is over 80 percent on children's television.

In terms of meal components, we are seeing declines in categories such as frozen pizzas, breads, pastries, waffles, pancakes, cereals and oatmeal, we are

seeing increases in other categories such as entrees, soups and fruits and vegetables. Again, while the fruits and vegetables category starts from a very small base, the increase is over 150 percent.

We are also reporting on advertising viewed by teens. Teens view 28 percent fewer food and beverage ads in 2008 than in 1994. Although ads viewed did increase slightly from 2007 to 2008, by 2.4 percent.

Similarly, teens viewed eight percent fewer food, beverage and restaurant ads since 1994, while they viewed 7.3 percent more ads in 2008 than 2007.

Importantly, the same shift in product mix that we're seeing in the ads viewed by kids under 12 is occurring in ads viewed by teens, particularly with respect to the declines in ads for soft drinks.

Again, you can see the same kind of declines for teens in cookies, snack bars, snacks and candy, and a slight increase for gum and mints. Again, the same basic trends and shifting of the mix of products, frozen pizzas down, fruits and vegetables up. As we reported last year, television still represents the lion's share of paid advertising.

I want to talk a little bit about some of the efforts that the industry is undertaking with the many stakeholders who will be critical to achieving our goals

and reversing the trends in childhood obesity. In October, more than 40 retailers, nongovernmental organizations, and food and beverage manufacturers launched the Healthy Weight Commitment Foundation, a $20 million national multi-year effort designed to help reduce obesity, particularly childhood obesity, by 2015.

The Healthy Weight Commitment Foundation will promote ways to help people achieve a healthy weight, through energy balance, in the places that people spend most of their time, in schools, in workplaces, and in the marketplace. It will also undertake a public education campaign aimed at six to 11-year-olds and their caregivers.

Among other things, the Healthy Weight Commitment Foundation is supporting an expansion of the Healthy Schools Partnership, with an $8.5 million grant. The Healthy Schools Partnership is an innovative program with partners being the American Dietetic Association Foundation, PE4Life and the American Council For Fitness and Nutrition Foundation. It provides an integrated nutrition curriculum into the PE4Life physical education classroom, bringing RDs, registered dieticians, in to coach and motivate students alongside of PE4Life teachers.

Together, they teach students the concept of

energy balance, and it is working. In the fall of 2008, the ADAF and UC Berkeley launched a study to evaluate the effectiveness of the RD nutrition coaching component of the Healthy School Partnership. Although they started out roughly the same, after coaching, students in the intervention schools had scored significantly higher than those of students in control schools, particularly as shown here, in understanding how to maintain a healthy body weight and recognizing the value of eating more fruits and vegetables.

The study included 500 fourth, fifth and sixth grade students from five schools in the urban core of Kansas City, Missouri, where the student population is 75 percent or more eligible for free or reduced price lunch.

After RD nutrition coaching, twice as many students from intervention schools, 31 percent, compared to the control group, 17 percent, were eating vegetables at school lunch, and the program evaluators validated the self-reporting with photographic measures of actual consumption during school lunch. The difference was statistically significant.

So, the next step for UC Berkeley research is to develop, with the Kansas State University, a joint assessment of HSP's PE and nutrition coaches'

curriculum. Based on the student verbatims, we believe this is likely to show an added value to an integrated curriculum, as students connect the energy balance dots and learn how to balance healthful eating with physical activity.

Finally, in addition to these efforts in the marketplace, the workplace and schools, the Healthy Weight Commitment Foundation will launch in the first quarter of 2010 a national public education campaign on energy balance. The campaign is designed to help raise awareness about the importance of balancing a healthy diet with physical activity, particularly among children six to 11, their parents and their caregivers.

So, in conclusion, the average child aged two to 11 viewed fewer food, beverage and restaurant ads in 2008 than in any recent year, and the long-term decline has accelerated in the last four years. The mix of advertising continues to shift, a key objective of the IOM recommendations, as well as those of the FTC. Industry is developing and supporting initiatives in schools, in workplaces, and in the marketplace that are already having an impact and are gaining momentum, and we are going to continue to make every effort to address this problem, which we view as one of the most serious ones facing our society today.

So, I will stop there. Thank you.

(Applause.)

MS. KOLISH: Thank you, Mary, for inviting me and giving me an opportunity to discuss the BBB program over the last two years. My name is Elaine Kolish and I'm the director of the BBB's Children's Food and Beverage Advertising Initiative. As you may recall, this program became operational when we announced the commitments of our then 11 participants, right here at the FTC's July 2007 Forum.

At that time, we announced that our participants had exceeded our baseline commitment requirement of 50 percent, and instead had pledged that 100 percent of their advertising would be for healthier or better-for-you product advertising, or that they would not advertise to children at all.

Among other things, we now have expanded the program and have 16 members of the Initiative, and all 16 of these companies have now implemented their pledges.

My remarks today are focused on two points. One, the participants have made serious and important commitments about food advertising to kids. They are honoring those commitments and those commitments are resulting in significant improvements in the products

advertised to kids.

Second, we have been listening to the feedback on the program, and while it is not feasible for us to make every change that has been recommended, later in this presentation, I will be describing the many changes that we are adopting that will be effective on January 1.

Let me say first, Mary Sophos nicely talked about the overall decline in food advertising to children, and that's important data for food policymakers to know about and to consider, but the goal of the CFBAI, however, is not to reduce the amount of food advertising to children, but instead to change it. The food pledge program is seeking a shift in the mix of food ads directed to kids under 12.

By this, we mean that we are encouraging ads for products that are more nutrient dense and have fewer calories and that are lower in fat, sodium and sugars. As is widely acknowledged, however, childhood obesity is a complex problem. The food pledge program is not and cannot be a silver bullet that ends this problem, but we are a part of the solution, and our actions support the efforts of the most important influences in children's lives, their parents and their schools.

We recently released a report on the year 2008,

and we found that compliance was virtually 100 percent. Because of the comments that have been made about advergames today, I would like to spend just a minute on this topic, but first let me say, we do not have the benefit of seeing the MSU study in advance, so we don't know what food manufacturers are in the study, what websites and games were reviewed or exactly how the foods were analyzed, and without this information, it's difficult for us to comment on the results.

But we do think that it's important that research do contain this methodology, or it's of little use for policymakers in this area.

During our review of website compliance during 2008, we found that when companies use branded products in their child-directed games, they used only foods approved under their pledges with just a couple of minor exceptions, and our results are fully laid out in our report.

Since then, there have been some independent analyses of Internet advertising, and they have not reported any problems to us.

We are also surprised that the MSU researchers are contending that the nutritional content of foods in participants' advergames is not as good as the foods in nonparticipants' games. These results appear to be

contrary to the findings and reports issued recently by both the Center For Science in the Public Interest and by Professor Kunkel. Both those reports that participants' foods were better than nonparticipants'.

Before our Initiative was launched, almost anything went about what was advertised. Now, science-based nutrition standards guide participants on what they're going to advertise and the BBB's oversight is providing transparency and accountability. The nutrition standards the company used are very recognizable, as they are based primarily on the dietary guidelines and FDA standards, and they're similar to a number of third-party standards.

We think that looking at the progress that has been made on a product and meal basis is very important, but we think using simplistic, and sometimes inexplicable categories such as "Go, Slow, Whoa," is a woefully inadequate way to measure change. These categories cannot measure the significant reductions in calories, fat, sodium and sugars that have occurred across a range of products. Those categories also seem to judge kids' meals that are advertised based simply on one component, such as the entree, and do not recognize the large amount of fruit and low-fat dairy advertising that is occurring through ads for kids' meals that now

meet our nutrition standards.

For those of you who are interested in learning more about this, I presented remarks yesterday at Children's Now Events, and those prepared remarks are available on the BBB's website.

The fact that not all products meet CSPI standards is not surprising either. Our program is designed to encourage participation, and accordingly, it balances flexibility -- by allowing individually developed standards -- with rigor -- by requiring that the standards be science-based. We think that judging products solely on the basis of whether they are above or below a particular threshold to draw conclusions of "healthy" or of "poor nutritional quality" is overly simplistic and yields to misleading conclusions. Nutritional science isn't that simple, nor are people's diets.

What is surprising is that CSPI does not acknowledge its own role in the standards used by some companies. In particular, CSPI singles out cereals as having too high a sugar content. So, I'm going to spend a minute describing the basis for the 12 grams or 48-calorie guideline that seems to be of particular concern.

This standard is based in part on taking the 200

discretionary calories in the diet and dividing those calories by four daily eating occasions, which equals 50 calories, or 12.5 grams, which was then rounded down to 12 grams, but beyond that, I considered data showing that ready-to-eat sweetened cereals are not a major source of added sugars in the American diet. Cereal accounts for just five percent of a child's daily intake of calories, and just five percent of the sugar in their diets.

I also considered that ready-to-eat cereals are nutrient-dense products, generally eaten with milk, which provides calcium, another nutrient that most children do not get enough of.

Finally, just before we finalized our pledge review, I took into account that CSPI had announced it had negotiated a settlement with Kellogg's. That settlement included a 12-gram sugar guideline, and here's a picture of their press release. Margo conveniently omits this fact when she calls this 12-gram sugar guideline a "hole" in the standards. As you can see, although it was a settlement, CSPI lauded it as both historic and as an important agreement that could be a rising tide that should lift all boats.

So, to disavow it now suggests that the Center For Science in the Public Interest settlement was

neither based on science, nor in the public interest, but what is more likely is that CSPI believed, as I do, that it was a reasonable place to begin, and that important first step could lead to further progress, and that, in fact, is what is happening.

The use of nutrition standards has resulted in a lot of changes, well over 100 products have been reformulated or newly created to meet participants' nutrition standards. The significance of the large number of reformulations may not be obvious to everyone. It may seem like a simple task to remove some sodium or sugar or fats from some product, but it is not simple. Changing one ingredient can affect the rest, and even small changes can significantly affect taste, mouth feel and, very critically, consumer acceptance of the product.

I've included this flow chart to illustrate the numerous steps that are involved in a reformulation, but even this flow chart is unlikely to give you a full appreciation of the time and effort that is involved.

In addition to being a multifaceted, lengthy process, it is a very costly, resource-intensive process. Exact figures are not available, but many, many, many millions of dollars have been spent to reformulate products to meet a company's standards for

child-directed advertising. In some instances, just changing one flavor could cost a million dollars or more.

So, I would now like to turn and talk about some examples of company changes. Burger King implemented its pledge six months ahead of schedule in July of 2008. In doing so, it launched a new product, BK fresh apple fries. These fries are really popular. They are actually even going to be sold in grocery stores. Later in 2008, it strengthened its already rigorous nutritious criteria for Kids Meals by adding a 600-milligram sodium limit and a requirement that a meal provide a good source of at least two nutrient shortfalls for children.

I also wanted to visually show you how Burger King's advertising has changed over the last five years. Back five years ago, the Kids Meals included a double cheeseburger, french fries, soft drink and, of course, a Sponge Bob toy. A couple of years later, the Kids Meals now include a variety of options, including Mott's apple sauce, low-fat chocolate milk and, of course, a Sponge Bob toy.

Now in 2009, all BK's Kids Meals primarily advertised to children meet strict nutritional criteria. This meal, one of four currently permitted under its pledge, comes in at 390 calories, well under its limit

of 560, and less than 25 percent of the calories come from fat.

Campbell's also has successfully tackled one of the hardest jobs in food science, reducing the sodium in soups and pastas significantly while retaining flavor. It devoted substantial resources to developing a proprietary sea salt and other know-how that allowed the sodium content to be reduced while keeping great taste that consumers like.

This know-how is being used across the company's different brands, and just yesterday, Campbell's announced it will be further reducing the sodium in its canned pastas by up to 35 percent. Now, all varieties of SpaghettiOs will be nutritionally aligned with FDA's criteria for healthy main dishes. My kudos to Campbell's.

I would also like to acknowledge the efforts that ConAgra Foods has made in reducing sodium and fats in its canned pastas. For example, the sodium content in one variety of Chef Boyardee has been reduced 30 percent. Additionally, the company has pledged to reduce sodium in its products 20 percent by the year 2010.

Here is one example of a Campbell's product, it's Chicken and Stars soup showing that it has been

reformulated twice, first from 940 to 640 and then to 480, the FDA level for healthy individual products.

General Mills has reformulated many products and introduced new products to meet its standards. In particular, it has now reformulated Trix cereal twice. First it reduced the sugar content from 13 grams per serving to 12, to meet its sugar guideline, and this month it again reduced the sugar content, it is now at 11 grams per serving.

This visual shows exactly how the reductions have taken place and the years they have taken place in these eight cereals that it advertises to children, and General Mills announced last week that it would be further reducing the sugar content of all of these cereals to single digits. That's great news.

Kellogg's also has reformulated a number of products, too, including many well-known and popular products, such as Apple Jacks, and here you can see that the sugar content of Apple Jacks was reduced from 15 grams to 12, which was a 20 percent reduction.

McDonald's has introduced some new combinations that meet its standards, these snack wraps, and its Happy Meal advertising now always includes apple dippers and low-fat milk. The number of healthier options that are being purchased that include apple juice, chocolate

and low-fat white milk and apples has increased significantly since they were introduced as options in 2004. Now about one-third of Happy Meals sold include these healthier products, and an astonishing 100 million orders of apple dippers have been purchased in Happy Meals since January 2008. That's a lot of apples.

In terms of long-term changes in food advertising, the first Happy Meal promotion was in 1979, and it featured fries and a soda. Now Happy Meals are shown with milk and apple dippers, and that you can see that the calories alone have decreased substantially.

I also want to share with you an informal analysis of participant advertising in 54 hours of children's program that we did in March 2009. This involved 233 ads for 24 products. First we found that all of the products of our participants in our sample met their nutrition standards. We then analyzed the products to determine whether they provided at least 10 percent of the daily value of potassium, fiber, calcium, magnesium or vitamin E, which the 2005 Dietary Guidelines for Americans identify as nutrient shortfalls for children. Or whether they supplied at least a half serving of fruit, vegetables, low-fat dairy, or eight grams of whole grains. We found that 83 percent of the ads provided one or both of these nutrients.

We also looked to see how many ads were for products in specific categories, and we found the following: 35 percent of the ads were for products or meals that had whole grain, 12 percent featured or included yogurt products, seven percent of the participants' ads were for products that included a half serving of vegetables, and 28 percent of participant ads included apples and milk.

We also thought it would be useful to share an analysis of the cereal category with you. As a preliminary matter, let me first explain that the products on the CFBAI's approved product list change as new products get added and others are discontinued. Currently, there are 37 cereals on the list. This means that they may be advertised to children, though not all of them are necessarily actively advertised to kids. Some flavors may be advertised only on websites or are on the list because they meet the company's nutrient criteria, though they are not necessarily currently advertised to kids.

There are several noteworthy characteristics of this collective group of cereals. The analysis you see on this slide is based on up-to-date formulations. First, much has been made of the sugar content of cereal. Well, prior to adoption of this program, some

cereals advertised to kids had as much as 16 grams of sugar per serving. Now, current formulations of the product contain no more than 12 grams of sugar per serving. But, in fact, the number of cereals that have ten grams or less of sugar is larger than the number that have 12 grams. Almost half have no more than 35 percent sugar by weight, a commonly used standard.

Of course, sugar is just one ingredient. When you look at the products in their entirety, you will find that virtually all meet FDA's definition for a healthy nutrient content claim, and all of them meet it on a per-label serving basis.

Further, all of the cereals contain essential vitamins and minerals, and the vast majority, 73 percent, are a good source of a nutrient shortfall for children. Well over half provide at least eight grams of whole grain per serving.

Finally, many scientists believe that children and adults are not getting enough vitamin D. More than two-thirds of the cereals in this group are at least a good source of this vitamin.

Going forward, as I said at the outset, we have been listening to feedback and we are making some changes. A key change is increasing the baseline advertising commitment to 100 percent from 50 percent,

and eliminating the possibility of meeting the commitment by including healthy lifestyle messaging in ads. This means that going forward, all new participants will have to meet this revised standard and no participant may go down in its commitment.

Consistent with our focus on child-directed advertising, we are expanding the venues and type of advertising covered to include other child-directed advertising in games, cell phones, and in child-directed DVDs. Word-of-mouth advertising also would have to meet our principles, and our new principles are available on the table in the foyer.

Since the outset, we have said that our standards will be grounded in science and evidence-based. Accordingly, in the fall or winter, after the Dietary Guidelines for Americans 2010 are issued, we will look comprehensively at relevant authoritative developments in nutrition science, including the recommendations the Interagency Working Group will send to Congress in July of 2010.

Secondly, although we think that the current definitions of child-directed advertising are working well, we are considering changes that could further harmonize them.

The participants in this program have not only

met their commitments, they have exceeded them. They have made many, many improvements in the products they advertise to kids. I am proud of what we have accomplished together, and I look forward to working with the participants to accomplish even more through collaboration and competition.

Thank you very much.

(Applause.)

MS. ENGLE: Thank you, Elaine.

Since we started late, I'm going to exercise the prerogative of extending this panel a little bit so we have some time for questions. I have a few questions that I would like to just to clarify some of the presentations.

Dale, one of the things you mentioned was the increase in the use of licensed characters that you saw between 2005 and 2009, and you noted that IOM had recommended that licensed characters be used only for healthy products, and that was one of the recommendations that the FTC made as well, and on some of the slides we saw a lot of examples of Disney and Nickelodeon characters on healthy products.

So, one of your findings was that half of licensed characters promote foods in the poorest nutritional category, which I believe was in 2009. I

wondered if you were able to compare that to 2005, whether the characters promoted more nutritional value over time, did that get better?

DR. KUNKEL: I'm not sure that we did that in 2005, and we absolutely could, so it's a very legitimate question.

MS. ENGLE: Okay. A question for further research, I guess.

DR. KUNKEL: Well, could I expand, though? What I would like to do is address one of the points that Elaine makes, where she says that the "Go, Slow, Whoa" approach doesn't measure the improvements that the industry has accomplished, and that's actually not true, it's just that the changes have been so inconsequential, that they haven't moved to another category of nutrition.

So, I think it's important to appreciate that as Margo underscored, she's using a more precise or refined measure, her data matched mine perfectly, it's just a question of whether we want to have benchmarks and basically have an analysis where we can categorize and make sense of it rather than saying you have to have a Ph.D. in nutrition to understand this issue.

I think it's a really legitimate measurement technique.

MS. KOLISH: I would like to respond to that, Mary. I think the categories are very nice ones as an effort to simplify complex nutrition to make it easier for consumers to make purchasing decisions for their menus over the course of a week. This tool was not designed to be a basis for formulating public policy decisions and presumably policymakers are sophisticated enough to understand the complexities of nutrition science. These categories can't and won't ever capture change. Some of them are totally inexplicable.

For example, french toast and waffles are in the "Slow" sometimes category, while sweetened cereals, regardless of their sugar content, seem to be in the "Whoa" category. There is no explanation of the nutrition science that underlies the basis for these categorizations. It doesn't make sense.

Cheerios with one gram of sugar could be in the "Whoa" category as well as any other cereal that had 12 or more grams. Those categories don't make sense for assessing change and the progress in the nutritional profile of foods.

DR. KUNKEL: You need to talk to Secretary Sebelius and her 12 leading nutritional experts who devised that framework, not, you know, I'm just a client of the framework that they measured.

MS. KOLISH: They devised it for consumers to help them.

MS. WOOTAN: But it doesn't matter, because even using nutrient-based standards, which are very similar to what your companies have pledged to follow, you said our standards are arbitrary, but they're very similar to what many of your participating companies have used. Using those types of standards, with limits for fat and salt and sugars, the results come out the same.

MS. KOLISH: No, they don't.

MS. WOOTAN: So, it's not the problem that Dale's categories don't work. I use standards very similar to what your companies are using and I got the same results. So do a number of other researchers that are finding the same thing over and over again.

MS. KOLISH: Margo, you apparently do not use the 12-gram sugar guideline that you negotiated with Kellogg in evaluating those cereals.

MS. WOOTAN: It was a litigation compromise, it wasn't our nutrition --

MS. KOLISH: Oh, so --

MS. WOOTAN: We have had these nutritional standards since 2005, that's what I use.

MS. KOLISH: So, it wasn't science-based or in the public interest? I guess I was wrong to give you --

MS. WOOTAN: You know what, Elaine, that's really uncalled for.

MS. KOLISH: No, it's not.

MS. ENGLE: May I interrupt? I would like to ask a question. I think the panelists have --

MS. WOOTAN: She has a Ph.D. in nutrition and none of the rest of us do.

MS. ENGLE: I think Elaine has provided some concerns about the measure that was used to evaluate success, and that's always, of course, going to be very important, what the measure is, and I think going forward, in the next panel, we will have a discussion about standards, uniform standards that the Interagency Working Group is coming up with, and that's something that the FTC will also use to evaluate changes. If I may, I think we're not going to probably agree on that standard right now, but I just had a couple of other questions I just wanted to pose to some of the panelists, if I could clarify.

For example, on Liz's research on the advergames, it was interesting because Dale's research suggests that very good compliance with the pledges on TV advertising, and on advergames, it didn't look that way, but I'm wondering if, again, it's a question of measurement or the universe that you studied. I notice

that you said that you excluded advergames that were clearly targeted to adults from your study. What about the teen category, because the CBBB initiative just covers 11 and under. So, those pledges would only go to advergames for the youngest segment?

MS. QUILLIAM: That is also a very good question. There is, as I mentioned, there's no published list that we could find for which websites target children, which advergames are directed to children, so we did cast a wide net, and looked for games that children would find and children would play. The fact that we found disclaimers saying, hey, kids, this is an ad, on a site, seemed to us to be an indication that the marketer was expecting that children would play those games.

Also, we found games particularly among the four pledge participants that agreed to refrain from advertising, we found games that were age restricted, that you had to enter a birth date, and if we entered a birthday that made us younger than 12, or younger than 11, our researchers were not allowed to play those games.

So, we tried to apply those criteria across the board, regardless of whether it was an Initiative company or not. But in the absence of published

information, clearly there is some judgment that we had to apply to categorizing the games.

MS. KOLISH: Mary, not to be argumentative, this time, but --

MS. WOOTAN: It's too late for that.

MS. KOLISH: You mentioned that where if they had an ad flag on it, saying hey, kids, this is an ad, that you counted it as kids games, and I think some companies may be including that in the excess of caution, in case a kid does come across it, so they are trying to be very, very careful, but they may not still be considering that website to be directed to kids or for the game to be directed to kids. It just may be the lawyer saying, you better put it on there.

MS. QUILLIAM: We would like to be able to do future research where we have actual data on the demographics of who is visiting these sites and who are using these games. We don't have that information.

MS. KOLISH: That's very important. We did a lot of research in our report looking at that, and there are scores and other empirical evidence available. Because occasionally we went to one of our members and say, we're worried about this game and they pull out Nielsen data and say the visitors are women age 35 and up. So, apparently, although you and I may not be good

game players, we are apparently in the minority for our gender and age group.

MS. ENGLE: Elaine, one of the announcements you made today was the extension of the Initiative to some other forms of marketing. I didn't see product packaging on that list. I'm wondering, that's certainly something the FTC has called attention to as an area we would like to see Initiative extended to. Is that something that your companies might be willing to discuss?

MS. KOLISH: Aren't we out of time?

(Laughter.)

MS. KOLISH: It's not a change that we were able to agree on. Some companies, of course, do include it as part of their global corporate social responsibility commitment, but for others, there are complex business decisions that don't make it feasible for them to make that change.

MS. ENGLE: Mary, I had a question for you. You had some graphs showing trends in the categories of foods that are advertised and the decrease in sodium and some other things and an increase in fruit juice and water, and as you noted, the baseline is quite different on those. So, I wondered the magnitude of the increase is hard to assess without knowing what the baseline is.

Does your report provide that, the baseline figures?

MS. SOPHOS: We can provide that. I think all of these categories are relatively a small percentage, cereals may be the largest, but they are fairly small percentages overall. We can probably find that information for you.

One thing I would like to do, though, is maybe just address something that Dr. Kunkel said earlier, when he referred to the conclusions of the IOM report from 2005, and while his quote was accurate, I think it left the audience with the misimpression about what the IOM actually did conclude, because what they said on their conclusion on obesity is that the evidence is not sufficient to arrive at any finding about a causal relationship between television advertising and obesity among children and youth.

So, I think it's important to make sure we get the record reflected accurately on that point.

DR. KUNKEL: We don't have the time to engage in this.

MS. ENGLE: Just to try to wrap up here.

DR. KUNKEL: We're not going to address it.

MS. ENGLE: I have a question for each panelist, it's almost New Year's, any New Year's resolutions on this topic? I'll just start with you, Dale, and go

down.

DR. KUNKEL: A New Year's resolution in this topic area. Boy. We need to see a uniform nutrition standard. How do I put that into a resolution form? The fact that Margo observed that there's so much variability between the nutritional standards and that the cereal companies are weak on sugar, one of the findings that I didn't have time to report is that if you look at the percentage of products that meet one company's standard, but violate other companies' standards, it's 88 percent for children's meal products. They meet their own standard. They don't meet the other company's standards. It's 92 percent for cereal products.

So, I think the industry needs to resolve to have a more uniform nutrition standard and I'm looking forward to the next panel to address that.

MS. WOOTAN: I don't know, I think I changed my mind a little bit over the course of the day, that I came in really with a very open mind about self-regulation and the chance of it working and I feel much less optimistic now than I did. So, my resolution might be to talk to some members of Congress about what to do on food marketing.

(Applause.)

MS. QUILLIAM: I guess I agree with both Margo and Dale. I would like to see not only more standardization with respect to nutrition, but also in terms of what does it mean that media is targeted to children, particularly in the online world, where it's clearly undefined, and Elaine and I have differing opinions, obviously, on which websites or which games might be child-directed or not, makes it very difficult for not just researchers, but policymakers and parents to have a clear understanding of what kids are being exposed to and how it affects them.

So, I guess that would be my New Year's hope as opposed to a resolution.

MS. ANOPOLSKY: So, I guess our New Year's resolution will be to continue to focus on this topic and try to apply the strengths and gifts that we have as a company to advancing the best interests of children.

UNIDENTIFIED FEMALE SPEAKER: Go Disney.

[Applause].

MS. SOPHOS: I think I would like to echo Jennifer's New Year's resolution, which is an actual resolution, because it involved a commitment on her part, and we certainly intend to continue our commitment to do things, including around the issue of marketing, but also on areas that we talked about with the healthy

weight commitment where we're actually going to have a chance to make a significant impact in improving children's lives, and I guess on my Christmas wish list, which is what we heard from the first half of the panel, is that we could perhaps stop arguing over categories and individual foods and figure out how to talk to consumers about how to manage a whole diet, to look at their diets and to look at energy balance and calories in and calories out and find some common sense ways to get a handle on this really difficult and challenging issue.

MS. KOLISH: My resolution is to try to persuade people that self-regulation is working, and that companies have made very sincere, meaningful commitments to addressing childhood obesity. No one wants children to be in the position they are, and to recognize that cereal companies, the other companies, are not pernicious purveyors of sugar, they're making products they think consumers want and need.

The reason I focused on the CSPI and 12 grams is that, settlement or not, it was a standard that was agreed to in negotiation, and one that the company had to then agree to use and reformulate its products to, and I thought it was unfair then to then judge them by yet a different standard two years later when they were

doing exactly what they promised to do, and that's what all of the companies have done in this program.

Two years ago, the standards we announced, had great fanfare, people were thrilled, from FTC to lawmakers, American Dietetic, American Heart, CSPI, the companies have done exactly what they pledged to do, and more. The goal post may be moving, I understand that, but that doesn't mean the companies aren't doing what they promised to do, and don't deserve some recognition of the significant progress that's been made.

MS. ENGLE: Thank you. Please join me in thanking the panel.

(Applause.)

MS. ENGLE: We're going to take a break now and reconvene at 3:30.

(Whereupon, there was a recess in the proceedings.)

MR. FENTONMILLER: We're going to move on to the final panel of the day, presentation from the Interagency Working Group on Food Marketed to Children. There will be a presentation and then a town hall discussion will follow. I am going to introduce the moderator of the panel, senior attorney Michelle Rusk.

MS. RUSK: Good afternoon, and thank you for staying for the last panel of the day. I don't know

when I've been at a conference where I've seen so many people stay for the last panel, and thank you for the earlier panels for plugging this one.

I'm Michelle Rusk, I'm a senior attorney in the Division of Advertising Practices at the Federal Trade Commission, and it is my great honor to introduce my fellow panelists who also happen to be the principal participants in the Interagency Working Group on Food Marketed to Children, which you've been hearing about a lot today. You may have even heard it referred to by the unofficial name, "SNAC PAC." It is one and the same.

With me this afternoon, I'm pleased to introduce Dr. William Dietz. Dr. Dietz is the director of the Division of Nutrition, Physical Activity. And Obesity in the Center For Chronic Disease Prevention and Health Promotion at the CDC.

From the Food & Drug Administration, we are honored to have Dr. Barbara Schneeman. Dr. Schneeman is the director of the Office of Nutritional Labeling and Dietary Supplements in the FDA Center for Food Safety and Applied Nutrition.

From the Department of Agriculture, I am happy to welcome Dr. Robert Post, who is deputy director for USDA's Center For Nutrition Policy and Promotion.

I just need to say that our participants this afternoon bring to this panel and to the working group a very impressive set of credentials and years of experience in fields like pediatric medicine, clinical nutrition, food and health, public policy, and I don't think that we could have hoped for a more qualified group of individuals to take on the charge of this working group.

So, speaking for FTC staff, it has been an honor working with all of you for the last several months.

I would like to explain how this afternoon's panel will be organized, because it's our goal to allow as much time as possible for open discussion, but we do need to provide you with some background first. For my part, I will lay out the parameters of the task that Congress set for the working group, and before we get into what I hope will be the focus of our discussion this afternoon, which is the nutrition portion of our work, I do need to briefly present our proposed standards on how we will be defining children's media.

Dr. Dietz then will give us some background as to the health and nutrition concerns that were really guiding the group's efforts as we went forward. Dr. Schneeman has the big task of describing the nutrition standards that we're proposing today, and

those are standards as they've been developed and refined up to this point. I think you've all received a copy of the handout that includes a one-page summary of those standards. If you don't, raise your hand, somebody on our staff will get you a copy.

Dr. Post will then identify what we have identified as some of the outstanding issues and questions that the working group has yet to resolve, and I think everybody on this panel will readily admit that our work is not yet complete.

So, we are soliciting your input on these outstanding issues today, and I do want to make sure that everybody understands that we will also be issuing a Federal Register notice, so there will be a public comment period for more extensive comment.

So, once we've heard from the panelists, we really do want to open up the forum to discussion with all of you. We know we'll need to provide some clarification, we want to answer your questions, and really we would appreciate your candid reactions to what the group is proposing. Hopefully, you won't be shy, I'd say from the day so far that's not going to be a problem, about sharing your ideas with us, about what works and what does not, and also about how to fill in some of the missing details.

So, I encourage you to prepare your questions as you are listening to the panelists, give their overviews, but please hold them to the second part. There are a couple of ways that you can participate. If you want to use the microphone and give us a brief statement or ask a question, just please identify yourself and your affiliation for the record, and also we anticipate that there will be a lot of people who want to give us their input, so please try to keep your statements brief. I'm going to limit you probably to a minute or less.

If you prefer not to speak, you can submit your questions to the group on cards, and just signal one of our staff if you need a card, and finally, for those of you who are watching on webcast, again, if you have a question, you can email it to us at childhoodobesity@ftc.gov, and we will do our best to fit everyone in, but again, there will be a Federal Register notice and an opportunity for written comment after the new year.

So, let's start. The Interagency Working Group on Food Marketed to Children was established last spring by Congress. You all have on your handout the exact language of the statement from the Omnibus Appropriations Act, but I will just summarize it

quickly.

Congress directed the Federal Trade Commission, together with FDA, CDC and USDA, to form the working group, and the stated mission of the group was to develop standards for the marketing of foods to children, and I will note that children were specifically defined in the Congressional language as 17 years old and younger.

We were directed as a group to consider both positive and negative contributions to the diet, and also the role of foods as well as specific nutrients and ingredients in both preventing and promoting childhood obesity.

We were also directed obviously to determine the scope of children's media to which these standards would apply, and finally, Congress requested a report of the working group's findings and recommendations, no later than July 15, 2010, which is exactly seven months from today. I think that we will hear reminders of this from our other panelists, but I feel the need to address two things right up front about what this effort is, and what it is not.

It is not a regulatory proposal. Congress was seeking the best thinking of the government agencies that have expertise on children's health and nutrition

and on marketing, but the final product of this group will be a report to Congress, and not regulations by the agencies.

Second, we didn't want anyone to misinterpret these standards as either a substitute or replacement for any of the food labeling regulations or a change in the dietary guidance. The working group was absolutely guided by the policies and regulations of the participating agencies, but the proposed standards should not be seen as a change in policy. So, these are not a new definition of healthy for labeling for children's food products, nor do they signal any change in the Dietary Guidelines for Americans.

We really see this as a set of standards to guide industry in determining what is appropriate to market to children, and especially given the tremendous health concerns that we've heard so much about earlier in the day. If industry responds, and we certainly hope and expect that they will, by limiting children's marketing to the foods that meet these standards, then we really do believe it will have a meaningful impact on children's food choices, on their diets, and ultimately on their health. That is really what was driving the work of the group.

I do want to make sure we make the best use of

this open forum to focus on the nutrition standards component of our task, because that really has been the lion's share of the efforts of the working group so far, and probably going forward as well. As to the other component, what constitutes children's media, the working group decided early on that there was already a template in place, and that comes directly from the FTC's 2008 study and report to Congress.

So, I don't want to use up valuable time outlining all of the details of that, because it is available in our study and online, and I know many of you in this room are already intimately familiar with them as companies that were asked to provide data for our study, but I will just describe a couple of key elements.

First, those definitions, we divided up into marketing to children ages 2 to 11, and adolescents, which was ages 12 to 17. So, children and adolescents, and for each of those we have definitions that encompass, I think, a significantly broader range of marketing activities than those that have typically been the basis of self-regulatory pledges, although I think you've heard Elaine announce in the previous panel that those were being expanded.

So, the FTC definitions actually identify 20

categories of advertising, as well as marketing, and promotional activities, and I think it's worth me reading them to you so you really have a sense of how broadly this is defined. It covers traditional measured media, like TV, radio and print, marketing on the Internet, other digital advertising like email and text messages, packaging, point of purchase and in-store labeling, product placement in movies and video games, contests and sweepstakes, cross promotions and product tie-ins, sponsorship of events, in-school marketing, philanthropic activities, and word of mouth and viral marketing.

So, those are the categories, those are the ages, and then for each of those activities that we've identified, we've established a combination of both objective indicators, typically something like the audience share for a television program, as well as subjective indicators like the use of child oriented characters, themes, language, and those two combined help us determine when something is child directed.

So, again, all of those definitions are set out in our study, there will be a formal opportunity to comment on the children's media piece of those, as well as the nutrition standards, and I do really want us to try and focus this afternoon, our discussion on the

nutrition piece of the working group's effort. So, with that, I would like to turn it over to Dr. Dietz.

Thank you, Michelle, and let me just echo Michelle's comments that this working group has been I think one of the most efficient and compatible groups that I have worked with, either inside or outside the Federal Government. So, it's been a real pleasure working with you, Michelle, Barbara and Rob.

My job is to provide the background that we considered for these standards for food marketed to children, and we began with the issue of obesity, you've heard earlier about the rapid increase in the prevalence of obesity among children and adolescents, and although we're now at a plateau in some groups, that's no cause for complacency, because these children will grow up to be obese adults and are likely to contribute disproportionately to the prevalence of severe obesity in adults and contribute even further to the major contribution that obesity makes to health care costs.

As was mentioned earlier in the day, those costs are about $150 billion a year, about almost 10 percent of the national health care budget, and we cannot continue on this, we cannot achieve successful health reform, and cost reduction, unless we address the epidemic of obesity.

Television is an important contributor. These are data that we published in 1996, they echo the data that we published earlier in 1985, showing the linear relationship between the prevalence of obesity and the amount of time that children were watching television. As I'll come to the potential mechanism by which this relationship exists in a moment, but I wanted to revisit the IOM standards that you heard mentioned several times earlier and the controversy about them.

The IOM committee concluded that there was strong evidence that the quality of children's diets were affected by television viewing and the food marketed on television, both in terms of preferences, requests and short-term consumption. Moderate evidence that it affected food and beverage beliefs in younger children and affected usual dietary intake. But the key phrase here, which was batted about in very contradictory terms earlier today, is the conclusion that there was insufficient evidence on the causal relationship that television advertising has to obesity, and it's important to understand the term "insufficient," because insufficient means there was just inadequate data that did not permit a conclusion one way or the other.

Our perspective was like that shared by those

who are interested in extra terrestrial life who say that the absence of evidence is not evidence of absence, and in this situation, given that the pressure of obesity and its adverse health effects, we felt that we couldn't wait for the best possible evidence around any of the criteria that I'm going to share with you, or that actually Barbara is going to share with you, but we really had to act on the best available evidence.

Some of that evidence began with this study by Claire Wang who showed that the average daily energy gap that accounted for the rise in BMI, or mean BMI, among adolescents in this study, of ten pounds, was roughly 150 calories a day. That's quite a modest increase. It was certainly greater among those who became obese, but for the general population, that modest increase of about 150 calories a day is what accounted for the shift in average BMI over this roughly ten-year period.

That can be accounted for by relatively modest alterations in dietary intake, like replacing a can of soda or reducing television time or increasing physical activity, either by walking or increasing physical education in schools.

So, these are manageable tasks, and it's likely that obesity is not caused by any single behavior, but by a multiplicity of behaviors, all of which contribute

small amounts of excess calories to daily caloric intake, and many of those are promoted by television. Among the strategies, I should say, that we believe are essential to begin to implement to reduce obesity in the population. That is, decrease the intake of high-energy density foods, largely fast foods, reduce the intake of sugar sweetened beverages, decreased television time and increased daily physical activity.

All of these can be associated with the amount of time that children are watching television, but increasingly, as the Epstein study, which was cited earlier today indicated, it appears that the relationship between television viewing and obesity is mediated more by food intake than by the displacement of vigorous or even moderate physical activity. Which once again, brings us back to the issue of advertising.

This slide shows the contribution of food ads, food products advertised on television, you saw data or you heard about the data by Powell earlier today in terms of the fact that foods advertised on television are largely unhealthy, and that was very nicely demonstrated by the study out of the Rudd Center that has also been alluded to.

On the left column are the cereal ratings for the ten least healthy cereals, and as you can see, that

these are also among the top ten marketed to children and the top ten cereals that are marketed on the Internet.

These and the foods that I showed you in the previous slide contribute to a discretionary calorie imbalance that is likely accountable for obesity and led us to focus very carefully on the added sugar recommendation that you'll see when Barbara presents.

Now, we were also mindful of the fact that although sodium was not a factor that contributed to obesity, certainly hypertension is highly prevalent in the population, and elevated blood pressure is true across the population, and is a particular problem for children and adolescents, as well as adults, with obesity. So, we felt that we also needed to consider a sodium standard.

Just by way of reviewing, the dietary guideline recommendation for sodium is 2300 milligrams per day, but specific populations, namely 75 percent of the population, which are accounted for by African-Americans, older Americans, or those who are hypertensive, is 1500 milligrams per day, the average intake is about 3500 milligrams per day.

The recommended allowance for children and adolescents, particularly children, I should say, is

lower than 2300 milligrams per day.

We felt that because the sodium intake and sodium tastes are likely to begin in childhood, and that the predisposition to hypertension is augmented by overweight and obesity, which affects 30 percent of the population, we needed to consider a sodium standard, particularly if we were going to have a long-term impact on reducing sodium in the food supply and reducing the consequent morbidity and mortality associated with increased sodium intake.

Some of those numbers are shown here, that in a model program, that the effects of reducing sodium by 50 percent in processed and restaurant foods will contribute to an important decline in systolic blood pressure, a decline in the prevalence of hypertension, coronary heart disease, strokes, death and mortality.

So, although these are not consequences suffered by children, we felt that it was also important for us to begin to address the issue of sodium in children's food supply.

Now, I wanted to close with just a few comments about the process, and what led us to some of these standards. We recognize very well the role that children's advertising plays in support of children's television. That's been true for 40 or 50 years.

Nonetheless, we recognize that children are this nation's most precious resource, and that our obligation was to health and health determined by what children ate.

So, at the outset, although we began by focusing on the foods that needed to be excluded from advertising, we very quickly shifted to a consideration of criteria that were based on the impact of these foods on children's long-term health, at least to the best of our judgment, and focused on foods and nutrients to limit and encourage, as the original scope of our work required.

But we thought that food ads needed to be based on the merits of the food, and we recognized that the standards that we're proposing may be challenging to meet, and we recognize further that the product reformulation necessary to meet these standards may take time. However, we also believe that food industries that cater to children are also concerned about their health, and share our view that nothing is more important than the health of children in this country.

So, in the discussion that's going to follow, we urge industry to show us how competing or alternative standards you might propose are compatible with the health of our children, because that's the discussion

that we need to have. It needs to be based on the merits of the foods that are advertised and nothing else.

Thank you.

(Applause.)

MS. SCHNEEMAN: Great, thank you. I'm Barbara Schneeman, from the FDA, and I have the enviable task of walking through the standards that we have tentatively agreed to, and as Michelle has indicated, this is still a work in progress, and we look forward to the input that we will get from this forum, as well as the input that we will get from the Federal Register notice. I think you can be most helpful to us in terms of focusing on what you see works well in what we have developed and what you think could work better, have we missed the mark or not considered an important issue.

I will also point out that my task is to walk you through the handout, and the standards, in terms of our thinking behind each of the standards. Rob will have the task then of kind of going back through that, talking about some of the unresolved issues, some of the questions that are still under consideration, some of the things that we need additional input on so that you see this is, indeed, a work in progress.

So, first of all, the resources that the working

group has used. I do want to highlight while you're seeing four of us up here, as representing our various agencies, I note we have all tapped into excellent resources within our agencies. We have done data runs to try and evaluate what is the impact that some of the standards that we might apply. Some of which we've accepted, some of which we've rejected. We've engaged the expertise within our agencies to try and come up with our best thinking about how to approach this task, which has, indeed, been a challenging task.

So, while we're here to take the tomatoes, I guess, we have colleagues who could share.

We also did look closely at the current regulations, particularly those for health claims and nutrient content claims. I refer you to the Code of Federal Regulations, some of the criteria that are in the CFR, we looked very closely at that to determine when something that has already gone through a process of vetting, and we know works, when we might be able to tap into that and use that kind of criteria.

Of course, we have the 2005 Dietary Guidelines for Americans, that is the basis for federal policy in the area of nutrition, so we certainly wanted to be aligned with the dietary guidelines.

The relevant reports from the National Academies

of Science, the Institute of Medicine and of particular interest, of course, are the two key reports, the Dietary Reference Intakes, especially the Macronutrient Report, but all of the DRI reports, as well as the Nutrition Standards For Foods in Schools. So, that just gives you an idea of some of the materials that we looked at, tried to evaluate in coming up with the standards.

So, the first thing we felt we had to address is that there are certain foods that are recognized in the dietary guidelines as foods that are part of a healthful diet, and we felt that these are foods we would want to encourage their marketing to children as a part of a healthful diet.

So, we created a foods exempt from standards II and III, and our goal here, we're not sure that we have the wording completely right yet, but our goal here is really to talk about these foods in their most basic form. So, 100 percent fruit or fruit juices, 100 percent vegetables or vegetable juices, and with that, recognizing some might be processed, that they must not exceed the 140 milligrams of sodium per RACC.

I realize not all of you will know RACC, RACC is the reference amount customarily consumed. It's the standard serving size that FDA has in the CFR.

But also then things like 100 percent non-fat and low-fat milk and yogurt, 100 percent whole grain products, and 100 percent water.

Again, the goal was to address those foods in their most basic form, and these are all representative of foods that are to be encouraged from the Dietary Guidelines for Americans.

Now, when we moved to standard II and III, standard II and III are intended to work together. They're not two separate standards, they're standards that build upon each other. So, they work together, not separately. Standard II is, I think, a new concept to consider, but again, it comes out of the Dietary Guidelines for Americans, and that is that foods marketed to children must provide a meaningful contribution to a healthful diet.

If, in fact, children are going to achieve a healthy diet, then the foods that they are choosing and consuming should help them along that path. The committee has two options to consider, and this is not you can choose an option, this is we are trying to choose an option. So, we're interested in the comments.

So, the first option that has been discussed by the committee is that the food must contain at least 50 percent by weight, or one or more of the following:

Fruit, vegetables, whole grain, fat-free milk or low-fat milk or yogurt, fish, extra lean meat or poultry, eggs, nuts and seeds or beans. So, it's simply using a by-weight criteria, does it make a meaningful contribution to the diet.

Option B refers back to the concept of the recommended serving. So, if we look at the food guide developed by USDA, commonly known as My Pyramid, but also referred to in the Dietary Guidelines for Americans, there are several food groups that are recommended, and if we take the approach of saying you would typically achieve those food groups over four eating occasions per day, three meals, one snack, then a quarter of that recommended serving is what would constitute a meaningful contribution of a food group within a single food.

So, the numbers here under option B lay out what would be a quarter of the food groups that are encouraged or recommended. We recognize that in some cases, that may be equivalent to the RACC, the reference amount customarily consumed, so that is something we would adjust for.

Then standard III recognizes that there are nutrients to limit in the diet, and specifically, what we focused on, and Bill gave you some of the background

here, we focused on saturated fat, trans fat, sugar, in particular added sugars, and sodium. Again, focusing on some of the key nutrients from the dietary guidelines.

So, for saturated fat, the criteria are basically what FDA has used to evaluate the claim of low in saturated fat, which is one gram or less per RACC, reference amount customarily consumed, and not more than 15 percent of calories. For trans fat, we don't have a reference value, so we simply set the criteria at zero grams per RACC. Since there was no reference value that we could use, other than to say zero.

Sugar was a bit more challenging. Again, we do not have a reference value for sugar. To come up with the number that we have, and I know many of you are saying, oh, no, that's a different number than we just heard about. But to come up with this number, we looked at the Dietary Guidelines for Americans, and in a 2000 calorie diet, it refers to 267 calories that can be considered discretionary calories.

So, if you convert that into grams of added sugar, you take all of those calories, convert them into grams of added sugar, and estimate, use the rule of thumb that FDA uses that 20 percent of a daily value would be considered high, you get to a value of 13 grams of added sugar.

Now, what's important about this number is that it's per RACC, it's not per label serving, it's per the reference amount customarily consumed. The footnote becomes very important in this context, because there are many foods that have a small RACC. For example, many of the cereals that we've been hearing about all day have a small RACC, they're 30 grams or less. So, in that case, the criteria applies to 50 grams of that food. If I had done my arithmetic correctly, that means that really in that smaller RACC food, if it were about 30 grams, a smaller RACC food, we're really talking more seven to eight grams of added sugar.

So, that consideration of how that criteria applied becomes very important.

Then with sodium, sodium, again, was a very difficult number to evaluate, and I think our inclination was to use the criteria for low sodium, which is the 140 milligrams per RACC; however, you would be amazed at how many foods get eliminated using that criteria.

So, in this case, we went to the IOM report on setting standards for competitive foods, in which they used the 200 milligrams per portion. We felt that perhaps this needed to be an interim value before we could continue to ratchet down the criteria until we got

to a standard of low sodium.

So, that's just walking you through the standards that where we are now, as tentative standards, the thinking behind them. These apply to individual foods, and this last slide is just to remind you that standard I really sets what foods could be exempt from standards II and III, whereas standard II and III are meant to work together. There's an "and" between them, not an "or" between them.

So, with that, I'm going to turn it over to Rob, to go through some of the issues, concerns, questions that are still under consideration.

(Applause.)

MR. POST: I think it might be helpful to go through these and refer to the slides as we raise these questions. So, thank you.

My role this afternoon, as you have heard, is to look at the tentative proposed nutrition standards, and review some of the questions and discussion issues that we know we have and we think you probably will as well, and perhaps others will come to mind, and we can promote some discussion that will help us better frame the questions, perhaps, in our Federal Register document. Hopefully we'll get very helpful comments to help us complete this task.

Well, the first set of questions that we thought of on which we're soliciting comment relate to the nutrition standards in general. We had some concerns about the age category that we're dealing with, children versus teens. The tentative standards were presented for kids two to 17, as was noted, and that response to the Congressional directive that we received.

So, we're asking, should we recommend standards that include two age tiers, based on nutritional needs and caloric intake of teens and younger children. Further, should standards cover foods for children that are less than two years of age. That wasn't a category we were asked to deal with.

With regard as a general comment on the standards, with regard to those standards generally, they are representing proposed standards for foods, and they focus on individual foods. We intend to also establish criteria as needed for meals and main dishes, which are categories of products that are defined in the nutrition labeling regulations. What criteria in that regard should be used to adjust to address larger portion sizes for meals and main dishes? We're asking that question, and you probably would think about that as well.

With regard to non-specific brand advertising,

how will the criteria be applied to generic food brands, and product line advertising, and advertising for restaurant chains, rather than specific foods or menu items.

With regard to nutrients to encourage, Barbara described those. Our approach to nutrients to encourage. The standards as described don't address nutrients to encourage. The shortfall nutrients. We were thinking of whether, in fact, we should establish a separate set of criteria for shortfall nutrients to encourage. If so, how should the issue of nutrient fortification be addressed?

With regard to portion size and caloric limit, should there be a criteria restricting the portion size or calories of foods marketed to children? For example, should the amount of product featured in an ad not exceed the labeled serving size?

The next set of questions relate to standard I that you see on this slide here. Foods exempt from standards II and III, with regard to foods exempt from standards II and III, are there foods that should be added or eliminated from the foods that are exempt from the other standards? We've provided a listing here, but it's not exhaustive. So, you might consider what might be added, or even removed from this list.

With regard to the sodium limit for vegetables, as was noted, there's 140 milligrams of sodium or RACC limit that we're suggesting. Regarding canned vegetables, which are typically packed in a solution that contains added salt, should the sodium limit for vegetables be exempt, or be higher for canned vegetables, since some of the sodium content is drained away before consumption. We weren't sure on how to deal with that.

The next set of questions that we haven't fully completed our thought process on relate to the tentative standard II on meaningful contributions of a food component to a healthful diet. So, with regard to the food groups, the list of food groups in standard II goes beyond the food groups to encourage in the Dietary Guidelines for Americans.

Are there food groups that should be added to or eliminated from this list?

With regard to vegetables, regarding vegetables in standard II, should the meaningful contribution of vegetables in option A or B be limited to dark green vegetables, orange vegetables, red vegetables, which are specifically identified, given the already high consumption of potatoes by children. Dark green, orange and red vegetables are the specific types of vegetables

that Americans should consume more of.

With regard to option A and option B, in general, considering both of them, what are the advantages and disadvantages of these two options toward promoting food group recommendations?

With regard to the calculation for option B, the option B calculation, option B thresholds are based, as was noted, on a 2000 calorie level, and it assumes that people have four eating occasions per day. In this scenario, does the calorie level or eating occasion need to be adjusted for children?

With regard to the tentative proposed standards that are identified in standard III, we also have some questions to ask regarding nutrients to limit.

The proposed standard III limits are for nutrients. Are there other nutrients or food ingredients that should be limited? For example, total fat, cholesterol, and then food ingredients like non-nutritive sweeteners and caffeine.

On the issue of added versus total sugars, as described, the sugar criterion is no more than 13 grams of added sugar per RACC, or if the RACC is small, per 50 grams of food. Should a limit be set for total or added sugars, and what are the challenges in verifying added sugars content for those that manufacture foods.

Now, with regard to the calculation of the sugar limit, we had thought about this, and the tentatively proposed 13-gram limit is based on a 2000 calorie diet, of which there should not be more than 267 discretionary calories, as Barbara mentioned, to conform to the dietary guidelines. Should discretionary calories from solid fats and added sugars be adjusted down for children, and should it be apportioned between sugar and fat calories?

Also, with regard to the sodium limit that you find in standard III, the 200-milligram criterion for sodium is based on the April 2007 IOM report on nutrition standards for foods in schools.

Consideration was given to the approach taken by the more recent IOM report on school meals, and the gradual reduction in sodium that it recommends, and that is advised for schools. So, foods in schools.

Currently, low sodium foods contain less than 140 milligrams by definition. So, therefore, it's proposed that the nutrition standards for marketing set an interim limit for sodium. Is there a nutrition-based rationale for establishing a limit higher than 140 milligrams, we would like to know that. Regarding a gradual reduction of sodium in foods that can be marketed, how can the sodium contents of such foods be

lowered? What are the methods for doing that?

With regard to some other general areas that might come to mind, marketplace impact issues, for example. There are some questions that were raised by the group. In terms of general impact, regarding general market impact, what impact will these standards likely have on foods currently marketed to children? What percentage of foods currently marketed will be eliminated? To what extent can foods be reformulated to comply? So, we would like information and a discussion about that.

With regard to outliers, are there, in fact, outlier foods that need to be addressed either with specific restrictions, or specific allowances?

Looking at some unintended incentives, or unintended consequences, do any of these standards create incentives for manufacturers to reformulate in a manner that would not improve the nutritional quality of the product? For example, replacing sugar with flour or a bulk filler, or using non-nutritive sweeteners to qualify for lower added sugars.

With regard to the definition of marketing to children, as Michelle had mentioned, there are probably questions that relate to that area as well, but for our discussion today, I think we would like to promote a

discussion that relates more to the nutrition standards, but there will be ample time to comment in that regard with the Federal Register document that we're planning.

So, with that, I think I've given you some food for thought, hopefully food that meets our nutritional standards, and by the way, the tomato issue really doesn't bother me, because tomatoes are among those vegetables that we're trying to promote.

So, with that.

MS. RUSK: As long as they're low sodium. Thank you, Rob.

(Applause.)

MS. RUSK: So, we've had a few months to wrestle with all of these issues, and I know it's a lot for this audience to take in all in one sitting, so you may need a few moments to catch your breath and gather your thoughts. Maybe not. Actually, why don't we start with a question from Dale.

DR. KUNKEL: I'm not sure if this is an issue that you've thought of, but having studied advertising to children very carefully, historically, there are not always clearly identifiable products in the ads. For example, a McDonald's ad could promote the brand but not a specific product, and in one case, I had to make a judgment how I was going to classify the product based

on a visual of the product on the bed stand for less than a second in a 30-second ad.

So, have you thought about how these guidelines would apply to an ad that might not promote a specific product, out of fear that companies could potentially evade the guidelines by just having branded advertising?

MS. RUSK: We have thought about that, and I think we've thought about it in connection with other food advertising matters that we've handled and with our food marketing study, and it was one of the litany of questions that we have yet to resolve, but I think it's a very valid issue, and I think one approach may be that if it's a branded ad without specific products depicted, we would be looking at nutrition of the whole line of products.

Yes, in the back there?

MS. CLARK: This question is for Barbara. In going through the guidelines that you indicated for added sugar, I would just like to have clarity on how you propose to track that, because the current regulations require total sugar to be disclosed on the label, and that's what we do in the industry, so just some idea of how you plan to monitor that.

MS. RUSK: Thank you. Before we go any further, I think I didn't ask Dale to identify himself, because

he was just on the previous panel, but I wonder for those of you who don't know, if you could identify yourself for us.

MS. CLARK: Celeste Clark, Kellogg Company.

MS. RUSK: Thanks.

MS. SCHNEEMAN: The issue of added sugars is a question that we have in our list of questions and issues. I would say the scientific issue is a very challenging one, because if you look at the Dietary Guidelines for Americans, the focus is on added sugars. That's where it's either excess calories or it's displacing more nutrient-rich foods in the diet.

So, it's what the dietary guidelines focuses on, it's what the IOM, macronutrient report focuses on, and we don't want to create a situation where you could have total sugars, but you have 99 percent of it is added sugar, but it's still just under the total sugars marker.

So, from a scientific nutrition point of view, we feel it's important to get to the issue of added sugars, that's where the public health issue seems to be. We are asking for comment and input on how can we make that a useful criteria, particularly since at this point, it's not a regulatory standard, it's something that we would like to see that the industry could

embrace, moving in that direction.

MS. RUSK: Over here? In the front row, I think we have a question.

MS. ANG: I was wondering if you considered --

MS. RUSK: Again, if you could identify yourself.

MS. ANG: I'm Angelique Ang [phonetic] from Children's National. I was wondering if you considered some limitations on highly processed foods or food products as opposed to what we would traditionally call foods, or if these standards were part of getting at that issue.

MS. RUSK: Go ahead.

MS. SCHNEEMAN: Actually, I think one of the initial phases and where a lot of people begin with this is we had a standard on foods exempt from the standards, since they are part of a healthful diet, and you instantly start to think of are there foods that you would just simply say categorically should not be marketed to children. Certainly there has been discussion of that, but once we became engaged in the kind of issues that are outlined in standard II and standard III, then these standards seemed to take over that issue, that you're less focused on what shouldn't be marketed and you're more focused on what could be

marketed within the context of these standards.

MS. ANG: My only concern is that there's still room for all kinds of additives and preservatives and unnatural flavorings and those kinds of things.

MS. RUSK: But the comment was a concern that there's still room for all kinds of additives and other ingredients that might be of concern to children's health, and that is a point that we've talked about within the group and something that we will be specifically asking, I think, in our Federal Register notice.

I see a question -- I'm sorry, Rob.

MR. POST: Just to follow up, too. The idea that we are looking at a contribution of foods to encourage or food groups to encourage, or food components, helps address that as well, and if you have comments in that regard, in terms of the benefits of whole grains and vegetables, please provide those comments.

MS. RUSK: Bill, did you want to add anything to that?

MR. DIETZ: No.

MS. RUSK: I think there's a question in the back over there.

MR. JAFFE: Dan Jaffe with the Association of

National Advertisers. Just having eyeballed this proposal, I can see immediately that while I don't in any sense have the full import, this is an extremely complicated proposal that's going to affect a very wide range of our members, and going to have extremely broad impact on the advertising community.

So, I was wondering, are you giving a fairly substantial amount of time for comments back? Have you thought out how long that could be? Because I can assure you just looking at it for two seconds, that there's going to be a lot of time that people are going to need to have to really dig into all of this.

MS. RUSK: I think that we do want to make sure that we give ample opportunity for people to give us well-thought-out comments and to get valuable information. On the other hand, we're also balancing the constraints of a July 2010 deadline for getting a report to Congress. But certainly, we want to work with everybody to make sure that we're getting detailed and useful feedback from the industry, and I think Bill alluded to this in his opening remarks that we do appreciate the import of what we are recommending and we do appreciate that this is something that would be challenging for the industry.

MR. JACOBSON: Mike Jacobson from the Center for

Science for the Public Interest.

I have three quick things. One is Dr. Dietz, I think, could have gone farther in the harmfulness of salt. Salty foods induce thirst, and what kids often drink is fruit drinks or soft drinks, soda pop.

On the comments about various additives added to foods, I think the committee should be aware that in the Institute of Medicine Report on School Foods, there was a question about the safety of artificial sweeteners for children, and also the National Institute For Mental Health acknowledges that food dyes may cause hyperactivity in some children.

The third thing is, option A and B in standard II, they're complicated. You said you have done computer runs on looking at the effects of various proposals. I think it would be very helpful if you could provide the public with examples of what's the import of choosing option A versus option B? Which products might be included or excluded with these kinds of options.

MS. RUSK: Okay. Thank you. So, I think that we will be looking for the kind of input that you're giving in terms of the specific threshold on salt, it was something that we had a lot of discussion on, as well as additives, food coloration, artificial

sweeteners, that's something that we anticipate getting input on in terms of whether there are other nutrients or ingredients to limit that would advance the mission of these standards. I think I'll let Rob comment on sort of some of the food runs that we did and what data may be available actually soon for everybody to use.

MR. POST: As Barbara had mentioned, and Michelle as well, we did, in fact, plug in these nutritional standards into real life effects here, and will consider how we can provide that information, perhaps in the Federal Register document, to show how the various standards will be applied. Ultimately how an option A or option B will play out for standard II.

MR. DIETZ: I would also fully expect that we are going to see that from industry. That would be useful data for the food industry to provide us so we get a better sense of the scope and impact of these standards.

MR. POST: To add to that, exactly. The formulations and the intricacies of formulating foods we're not fully aware of. There might be foods that we just haven't thought of in terms of the effects. So, we would look forward to manufacturers giving us more information on that.

MR. MacLEOD: Bill MacLeod from the law firm of

Kelley, Drye & Warren.

Could you elaborate on how you would define advertising to children two to 17, what factors you would take into account in determining what is marketing or advertising to individuals of those ages?

MS. RUSK: Yes, I'm not sure if you came in after my opening, we are using, Bill, as a template the definitions that are in the appendix to our 2008 report, and the food marketing study. So, that defines a set of marketing activities for children, as well as adolescents. We felt like that was the right template to start with, because it was one that has been vetted already, it's one that seems to be workable, at least as a starting point, it's one that many of the large food manufacturers used when they submitted data to us for the study.

So, the categories of marketing that are covered, and the indicators for when something is child-directed are in that appendix to our study, but we certainly recognize that that's a template and a starting point and that that will be likely the subject of comment as well.

MR. FAVOLI: Jared Favoli from Dow Jones.

I guess from a nonscientific perspective, can you explain the importance of these recommendations and

also what do you expect or what do you want to happen with these recommendations once they get to Congress?

MR. DIETZ: Well, the impact of these standards, we hope, is going to improve the health of children, as I stated in my introductory comments. They're certainly open for input, because they are quite a challenge, based on what analyses we've done for industry.

On the other hand, we were governed by our best guess, and in some cases it was a guess, some cases it was based in reasonably sound data that these were healthful standards, and would like input, as I said, about whether people agree with that or if industry or others can produce competing standards based on the judgment about what's best for children's health. That's what governed our decision.

With respect to this report delivered to Congress, I think that's the task that we were assigned. These are, as Michelle indicated, these are voluntary. This is not a regulatory process, but as earlier speakers pointed out, there's a lot of inconsistency about the standards that are currently available in terms of what companies are doing. We hope to improve that, to set some goals for industry that would improve the health of children and hopefully adhere voluntarily to what we've proposed.

MR. FAVOLI: May I ask a follow-up?

MS. RUSK: Can we use the microphone, also for the webcast I think it's important that we have a microphone.

MR. FAVOLI: I guess one thing I'm confused about is are these nutritional standards or marketing limits?

MR. DIETZ: These are nutritional standards.

MS. RUSK: Well, yes, they are nutritional standards, but the idea is they would govern what foods would be marketed, advertised, in children's media. It's not what foods can be produced and sold in the marketplace, it's what foods do we think it's appropriate for the industry to encourage children to eat.

So, we want to see the food industry encouraging them to eat foods that are not high in empty calories, that are high in nutrition.

MS. WOOTAN: I'm Margo Wootan with the Center For Science in the Public Interest.

I was glad to hear, Robert, some of the additional issues that you all were working on, because as Barbara was going through, I was thinking what about meals and what about brands and what about portion sizes that are depicted, you know, issues that we have seen

come up. So, I think those are all important considerations.

I was very intrigued by the food-based approach that it's not something that we've seen as much with individual company marketing standards, and I need to process it a little bit more, but I think it's very interesting and promising.

I was wondering why you included some of the food groups that are not among the food groups to encourage in the dietary guidelines? It's clear fruits, vegetables, low-fat dairy, whole grains are things that kids are not eating enough of, and we need to market them and encourage kids to eat them, but why did you decide to include meat and eggs and some of the other foods which kids are getting plenty of protein that are not areas of concern in the diet?

MS. SCHNEEMAN: I can comment, and Rob may have some comments as well. We discussed that issue, and it is important to keep in mind that there is a food guide that outlines what is an overall healthful dietary pattern, and so we recognize that certain foods we need to get more of and those have been outlined in the dietary guidelines, and yet there are foods that are part of a healthful diet.

So, it's not that we should not be telling

children to eat them. I mean, they are part of the healthful diet. So, is the purpose here only to focus on meeting the dietary guidelines, or focusing on a specific recommendation in the dietary guidelines, or is the focus to recognize the overall pattern of a healthful diet and that those are foods that could be appropriate to be marketed to children if, in fact, a food makes a meaningful contribution toward that overall dietary pattern.

MR. POST: I was going to say that it is a dietary pattern focus here that we thought was useful. So, the idea that, as Barbara said, you can build a diet with a lot of foods, there are probably more foods that you should be consuming more often.

The other point I would like to make is that we did mention or we do list actually meat, I mean, we do take into consideration that there is a need for lower fat versions of foods or where fish has been an emphasis as well. That's part of a healthful diet.

MS. RUSK: Stunned silence. Do we have any questions from the Internet as well? I don't know if there are any cards from our webcast viewers.

Go ahead.

UNIDENTIFIED FEMALE SPEAKER: Since there's total silence, I am going to ask a question as a mother

as opposed to the attorney, which is why I'm here, and I work for NPLAN.

MS. RUSK: Your name?

MS. GRAFF: Samantha Graff.

My question is, whole grains, I'm not sure I understand it. Because I just understood you to say that Lucky Charms is one of the top three worst cereals for you, and yet it's advertised on the product front as having or being whole grain and promoting whole grain. My understanding is that it has something to do with 51 percent whole grain, and then here it says 50 percent.

So, how does that shake down is my question?

MS. SCHNEEMAN: A good question and I think your question points to the confusion that people often have. So, depending on which option you looked at, option A or option B, we would set a standard for if you're going to market that cereal to children, then you have to meet a certain amount of whole grain. That's the food group that that food is going to make a meaningful contribution, as well as meeting the requirements on nutrients to limit.

So, this would be the first time that someone from the Federal Government we would say, gosh, if you're going to market that to children, and you're going to use whole grain as part of the marketing, you

should have at least this much within the product, and they can obviously provide that information, they could add more than that amount of whole grain, within the product. This is not a limit, they can do more than that.

So, I think it's setting a bar to say this is what you should have for that particular food group, food category.

Does that help address your question?

MR. DIETZ: And it also has to meet standard III.

MS. GRAFF: I understood that.

MS. RUSK: Over here?

MS. SCHNEEMAN: If I could maybe just add another comment to that, I think one of the other issues that has come up during the day, and it came up in the issues that we're looking at, when we set standards like this, does it also provide an incentive for reformulation.

So, for example, if your kid's favorite cereal has a little bit of whole grain in it, but it doesn't have this much whole grain in it, does it encourage the manufacturer to increase the amount of whole grain so it now meets the standard, and that's part of what we're interested in, is this a way of encouraging

reformulation in the right direction.

MS. AMENT: Lucy Ament with Chemical News.

Have you been charged by Congress also with coming up with possible penalties for compliance enforcement options if companies advertise that they meet the particular standards that you eventually come up with?

MS. RUSK: No, not in this Appropriations Act language, no, it was definitely a mandate to issue findings and recommendations and put those in a report to Congress.

MS. LEVIN: Hi, Susan Levin from the Physicians Committee For Responsible Medicine.

The 15 percent, no more than 15 percent of calories from saturated fat seems a little high, considering the American Heart Association's recommendations are less than seven and the dietary guidelines less than ten. How did you get to that number?

MS. SCHNEEMAN: The number for saturated fat is actually, that's one we took straight out of the Code of Federal Regulations that defines, it's how low saturated fat is defined in the criteria, and so that's one, I mean, all of these, you're welcome to comment on, if you think there's another standard that we should be looking

at or evaluating.

MS. RUSK: It isn't just 15 percent, it's also one gram or less.

MR. LINUS: Jake Linus with PBS.

Quick question, since this is such a large age range of kids, if you were to pick an age to split your recommendations, do you have one in mind across your panel?

MS. RUSK: Well, I think there are kind of two ways that you can think about that question. One is how foods are marketed, and what the target audience is in the media, and one is the nutritional needs of different aged children. In terms of the marketing, I think a lot of the media is naturally kind of divided into children two to 11, adolescents 12 to 17, and that's the way our food marketing study looked at that and looked at the marketing.

In terms of nutrition, I'll leave that for others to respond.

MR. DIETZ: On the nutrition side, there's some concordance, because adolescents is a time of higher nutrient requirement. So, but the dividing point isn't very explicit or clear.

MS. WEBER: Jennifer Weber with the American Dietetic Association.

On the standard I, you have the note that says 100 percent how you defined it, and then it says, "Except flavoring for water, milk and yogurt." Could you provide some additional information on your definition for flavoring?

MS. SCHNEEMAN: Right. I don't know that this is the final wording that we will have, obviously we don't know if this is the final wording we're going to have on everything, but again, what we were trying to do is make sure we categorize this in a way that said we're trying to get to the basic form of the food, and really modifications that are not changing the amount of solids from fruits or changing the basic nature of the fruit juice, I think this particularly applied for the fruit juices, the milk and the yogurt.

We recognize that for flavored milk and yogurt products, we think those can be evaluated using standard II and III. So, once you start adding a lot of other ingredients to any of these food products, then you can look at them under standard II and III.

What we were trying to do in standard I is just what foods get a pass. You don't even have to look at standard II and III. So, all foods can be considered at some point, it's whether or not they get exempted from II and III.

MR. POST: I might also add that there's a benefit to perhaps consuming, in our view, instead of sugared beverages, drinking water, and if it makes it more palatable, in terms of adding flavoring, then that should give it a pass. That was also part of the thinking here. Understanding that flavored milk is low fat or fat free, flavored milk is also potentially better than perhaps a sugared beverage as well. So, flavoring is also an opportunity to be in these products. We believe, at least the way we have tentatively proposed it.

MS. RUSK: I think we have time for maybe two or three more questions. I see somebody over here.

MS. FOX: Tracey Fox, Policy Consultants, and having worked on the IOM committee for Whole Foods, you all have struggled a lot I know and I think your list of questions is a very good list.

I just had a follow-up question on the flavoring one. I thought I understood the answer, and now I'm not sure I do. So, flavored milk would also generally have added sugar. Does that bump it automatically down to the review process of standard II and III?

MS. RUSK: Yes.

MS. SCHNEEMAN: Yeah, it bumps it.

MS. FOX: I thought I heard something different,

but thank you.

MS. RUSK: Anybody who hasn't yet had a chance to ask a question? Okay, we'll go here and here and then I think we can wrap.

MS. AMENT: Again, Lucy Ament with Chemical News.

Have you given any consideration to where foods fall on the glycemic index? I am not a dietician, but from what I understand, skim milk may be low in fat and sugar, but they enter the blood stream more quickly and can lead to spikes in that index.

MR. DIETZ: No.

MS. SCHNEEMAN: Again, I would just refer you to the IOM report, the macronutrient report, it has a discussion of glycemic index and how the IOM, the recommendations it made with regard to that information. So, that's where we're guided is from the IOM report.

MS. RUSK: One last question, go ahead.

MS. CROCKETT: On the 0.75 ounces. Susan Crockett, I work at General Mills. On the 0.75 ounce equivalent of whole grain, is that 0.75 of 30 grams or 0.75 of 16 grams? Because I've understood at one point that since 16 grams of whole grain flour in a slice of bread that that was the amount of whole grain in an ounce equivalent, but I'm just asking what your thought

was.

MS. SCHNEEMAN: You know, when we do the full report, I know that the ounce equivalence, I don't have all my notes here, and so I know the ounce equivalence on whole grains gets complicated very quickly, but we will have that description of how it is we're using that concept of the ounce equivalence for the whole grain, but I'm not going to try and repeat it now because I don't have my notes sitting in front of me.

MS. CROCKETT: It came out of USDA, Robert, do you have a response?

MR. POST: Yes, that unit of ounce equivalence, yes, that's based on my pyramid recommendations.

MS. RUSK: Okay, we will finish with one question from our web audience, I think, and I will just read it, rather than paraphrase it. Susie, it looks like this comes from a colleague of yours at General Mills.

Did you take into account the extensive body of peer-reviewed scientific evidence conducted over the past three decades that demonstrate the health benefits associated with ready-to-eat cereal consumption, all sweetness levels, including healthier body weight, improved nutrient intake, increased levels of activity, improved cognition and improved lipid levels, especially

for children?

MS. SCHNEEMAN: I would comment that our approach is not to target one particular food and exempt one particular food or other than what we've tried to do in standard I. So, I know it's very easy for people to hone in on one category of food, that's not really the approach that we use. We really tried to think about what's in standard I, what are foods that are part of a healthful diet, standard II and III, how do we make those two concepts work together.

Obviously, one of the goals of doing the data runs that we're doing is to make sure that it has face value, that when we looked at what comes out of the criteria, it makes sense, but we're not trying to develop criteria, see what foods get added or eliminated, it's really what's the rationale for the criteria, how can we use the resources that we have available, the experience of many people trying to develop these criteria, and then move from there to make some recommendations.

MS. RUSK: Okay, and I think with that, as I said, we will be providing ample opportunity for more detailed comment from everybody and we're looking forward to getting that information. We really are looking for your help on resolving some of the difficult

questions still and I would like to introduce or maybe Keith, do you want to, or Bureau Director David Vladeck to adjourn the conference and tell us about the next steps.

(Applause.)

MR. VLADECK: I promise to get you out of here by 5:00, so I will be brief.

This has been a fascinating, exhilarating, somewhat exhausting day, but I would like to begin by thanking the wonderful staff, the peerless staff who made today possible, including BCP staff, Mary Engle, Heather Hippsley, Keith Fentonmiller, Michelle Rusk, Kyle Young, Mary Johnson, Sarah Botha, Carol Jennings, Diana Finegold, Will Ducklow, T. J. Peeler, Deborah Clarke, Wayne Abromovich, and our stalwart Bureau of Economics colleague, Pauline Ippolito.

So, we also greatly appreciate those of you who are here today, those of you who were panelists, who contributed to the discussion, and for those of you who are watching on the web.

These are difficult issues. We're going to need your help. We welcome your input. We're going to need your comments as the SNAC PAC moves forward. So, we think of this as the start of an important dialogue, and we really do welcome it and need your input.

Let me give you just some thoughts about what we've heard today and what relevance it has to our work. First, we heard evidence correlating advertising for children and their preferences for and consumption of unhealthy foods. Exactly the kinds of foods that should not be the mainstays of a child's diet. We also heard about recent research on the causal impact of marketing on children's food preferences, purchase requests and short-term consumption.

This is a particular concern in an age of integrated marketing techniques with the use of ubiquitous and immersive marketing techniques with strong emotional appeal that may circumvent the reasoning capacities of the developing brain. Having raised two boys, I'm still waiting for that moment to happen, and they're in their twenties. But we can't ignore the science. The science is going to have to inform how we move forward.

Next, our panel of First Amendment experts discussed the legal implications of regulating advertising to children. We explored the idea that Commercial Speech Doctrine presumes that rational actors will make decisions based on information provided in part by advertising. Much of the advertising to children, however, doesn't fit this model. These ads

don't convey information. They try to elicit emotional response. For example, by marketing the idea that food is fun, to create positive psychological association with brands. Are these ads entitled to full bore commercial speech protection? I think our panel was divided on that question. I think that's an understatement.

(Laughter.)

MR. VLADECK: Research will also suggest that the developing brains of children and teens are more heavily influenced by non-informational advertising messages, and that the hypothetical rational adult around whom commercial speech jurisprudence centers is not the children who are the target of these ads are.

So, the question remains whether the existing law can accommodate governmental restrictions on child or teen-directed advertising, a question our panel found unresolved by existing case law, but remains an important issue.

We would not be talking about government regulation if industry self-regulation had made greater strides. To be sure, I want to acknowledge CBBB's work to get most of the major food marketers to agree on the need to improve the nutritional profile of foods marketed to kids. That is important. But I know that

the industry members understood that their pledges would be a moving target as we move forward.

I think it is clear that the target must move farther and faster. The stakes are too high to settle for partial improvement, or improvements made at a snail's pace. These companies should extend their pledges to encompass all forms of marketing, including product packaging.

Responsibility rests with the entertainment companies as well. Companies like Disney are to be commended for their positive messaging on health issues and for imposing nutritional standards on their licensees. That's all to the good. But again, the reality is that these companies still run lots of ads for unhealthy foods. Just flip on Nickelodeon, Cartoon Network, or Disney XD, which we have running constantly in the Bureau of Consumer Protection, or go to their websites, and you'll see what we mean. That, too, must change.

Finally, we heard from the Interagency Working Group on Food Marketed to Children, or what we effectually call the SNAC PAC. Here they are. Our version of the Mod Squad. SNAC PAC's guiding principle is that the food industry should not encourage children to eat high-calorie, low-nutrition foods, but this

should be our collective goal. Our children are important. These foods are enticing enough without the marketing muscle of Madison Avenue behind them.

The draft nutritional standards the FTC and our sister agencies have proposed today are our first cut on defining what foods children should be encouraged to eat. We will seek public comment on them before announcing the final standards in the July 2010 report.

To be clear, these standards will not be regulations. They will not be binding, but we expect the food industry to make great strides in limiting children-directed marketing to foods that meet these standards. If not, I suspect that Congress may decide for all of us what additional steps are required.

In the meantime, the FTC is gearing up to follow up on our previous report on marketing food to children and adolescents. In the spring, we will be serving compulsory process orders on major food and beverage companies that market to children and adolescents. You all know this is coming. The data we collect will enable us to gauge how food marketing activities and expenditures have changed since 2006, as well as the overall nutritional profile of those foods.

In sum, the FTC will continue to look closely at food marketing to kids. Not simply because of

Congressional mandates, but because it's the right thing to do. The status quo is unacceptable. We must stop posturing about responsible self-regulation and get to it. The public demands better, and unless there are substantial advances, our public officials will as well.

So, thank you for joining us today. We want to hear from you as we move forward. Thanks so much.

(Applause.)

(Whereupon, at 4:53 p.m., the forum was concluded.)

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: P034519

CASE TITLE: SIZING UP FOOD MARKETING AND CHILDHOOD OBESITY

DATE: DECEMBER 15, 2009

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 12/21/09

SALLY JO QUADE

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE