



November 23, 2009

Donald Clark, Secretary
Office of the Secretary
Federal Trade Commission
Room H0135 (Annex F)
600 Pennsylvania Ave., NW
Washington, DC 20580

Subject: Food Industry Marketing To Children and Adolescents: Paperwork Reduction Act Comment; Project No. P094511

Filed Online at <https://secure.commentworks.com/ftc-foodmarketingPRA>

Dear Mr. Clark:

The Council of Better Business Bureaus (CBBB), through its Children's Food and Beverage Advertising Initiative (CFBAI), appreciates this opportunity to provide comments on the FTC's Food Industry Marketing to Children and Adolescents proposed information collection. We applaud the FTC for its prior study, which, through empirical data collection and rigorous analysis, brought much needed clarity and certainty to the question of food and beverage marketing to children. The FTC is now proposing to obtain data on expenditures incurred in 2009 to compare to expenditures in 2006. The proposed new study also will seek nutrition information on products marketed to children and adolescents during 2006 and 2009. Our comment addresses how the marketing expenditures should be recorded and contains suggestions on information to include in your nutritional analyses.

About the CBBB

The Council of Better Business Bureaus, a non-profit 501(c)(6) membership organization, is the umbrella organization for local Better Business Bureaus (BBB), which are grassroots organizations that foster a fair and honest marketplace and an ethical business environment. The CBBB is a leading organization in the area of credibility validation through a number of significant seal programs. With BBB affiliates,

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the CBBB overseas nearly 500,000 on-and off-line seals, including on-line reliability seals, business standard seals and charity standard seals. The CBBB also administers a number of self-regulation programs including the *National Advertising Review Council (NARC)*, the *Electronic Retailing Self-Regulation Program*, BBB's *AUTO LINE* and the *Children's Food and Beverage Advertising Initiative*.

CBBB's mission is to be the leader in advancing marketplace trust and to be the "go to" organization and partner of choice for marketplace concerns. In addition, the CBBB has an equal and compelling commitment to be the resource of choice for consumers. Recent survey data show that the CBBB has been successful in achieving its goals, with the vast majority of consumers being familiar with the CBBB and a substantial majority saying the CBBB plays an important role in promoting ethical business practices and high standards for business reliability and consumer responsiveness.

CFBAI Comments

As you know, the CFBAI was launched in November 2006, with the goal of being part of a multi-faceted solution to the complex problem of childhood obesity by using advertising to help promote healthier dietary choices and lifestyles among children under 12. To accomplish this goal the CFBAI aims to shift the mix of advertising primarily directed to children under 12 so that advertising includes healthier or better-for-you products, as determined by science-based nutrition standards. Our program requires participants to commit to advertising healthier products at least half the time but all the participants have committed that 100% of their child-directed advertising will be for healthier products or to not engage in child-directed advertising at all.

We recently published a compliance and progress report on the year 2008, the first full year of CFBAI participant implementation. During 2008, 12 of the then 15 (now 16) participants had implemented their pledges. We found that compliance was high and that the types of products now being advertised include products that have been reformulated or newly introduced to have fewer calories and to be lower in fats, sugars or sodium. To read the report, visit <http://www.bbb.org/us/article/food-and-beverage-companies-continue-to-raise-the-bar-when-advertising-to-k-13154>.¹

In March 2009, as part of a project to assess compliance with participants' pledges and to take an informal snapshot of the nutritional profile of participant products advertised

¹ As we note in this report, participant commitments generally are based on annualized audience composition data at time of purchase (based on historical data), and media purchases are usually based on a "run of schedule" basis. See BBB Report at p. 24. If the FTC proceeds with this information collection, we suggest that it consult with the anticipated recipients of the data requests so that the FTC's requests are reflective of companies' media buying practices, as we note above. We believe this will assist the FTC and the companies by providing clarity and avoiding confusion or perhaps unnecessary reporting when there are unexpected differences in audience composition at time of airing from the expectations at time of purchase. We also note that some participants may run adult-directed ads for products (e.g., for family entrees) during children's programming, as permitted by their pledges. *Id.* at pp. 17, 24. We suggest that you consider excluding reporting for such advertising when the advertiser demonstrates the advertising was adult (not child) directed. See also note 3, below.

on television, we reviewed 54 hours of children’s programming.² Our review showed full compliance with participant pledges—that is, all the advertised products met participant limits on calories, fats, sugars, sodium and other requirements, if any. We also analyzed the participants’ advertised products to determine whether they provided a “good” source (10% of the Daily Value or “DV”) of nutrients that are shortfalls in children’s diets (“shortfall nutrients”) or provided at least a half-serving of a food group that the Dietary Guidelines for Americans 2005 recommend for increased consumption.

As seen in Figure 1 below, our analysis showed that, in addition to meeting their pledge nutrition standards, 83% of the advertising for participants’ child-directed³ food and beverage products in the sample⁴ and 67% of the products⁵ provided at least a “good” source of one or more shortfall nutrients (vitamin E, calcium, magnesium, potassium, and fiber), or provided at least a half-serving of fruit, vegetables, low-fat dairy, or eight grams of whole grains (i.e., food groups the 2005 Dietary Guidelines for Americans recommend for increased consumption).⁶ CFBAI participant products that did not meet the study criteria generally contained other positive nutritional benefits such as containing 10% DV of other essential vitamins and minerals, or whole grains, but less than the eight grams we used in our review.

² The programming data was collected from March 12, 2009 through March 18, 2009 on Nickelodeon, Cartoon Network, and ToonDisney during popular children’s viewing times.

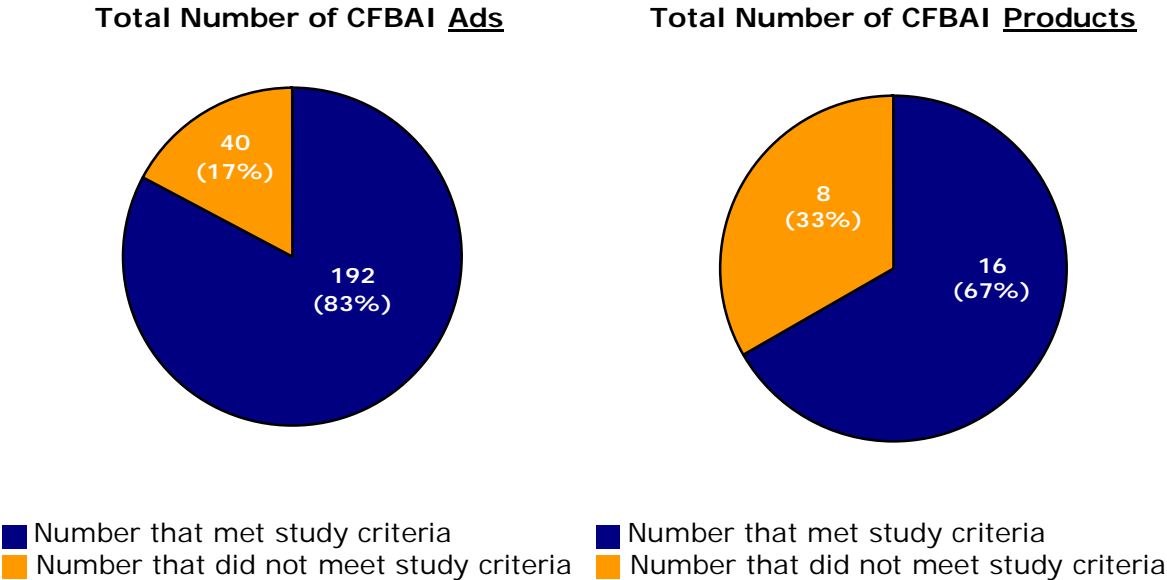
³ For the purpose of this study we excluded one participant’s adult-directed product that was permissible under its pledge.

⁴ One of the products included in this analysis did not meet the participant’s nutrition guidelines but was from a brand that was scheduled to be incorporated into the participant’s pledge commitments in June 2009. Because it was permissible for the product to be advertised at the time we conducted our analysis we included it as a compliant ad. The product is a good source of fiber and provides a full serving of vegetables. As of June 2009, the participant ceased advertising this product consistent with that participant’s pledge commitments because the product currently does not meet its nutrition criteria.

⁵ Some products were advertised multiple times so the number of ads is higher than the number of products advertised.

⁶ HHS and U.S. Department of Agriculture, *Dietary Guidelines for Americans 2005* at pages 5 and 6, available at www.healthierus.gov/dietaryguidelines. See also what constitutes a serving of whole grains at <http://www.wholegrainscouncil.org/whole-grains-101/what-counts-as-a-serving>.

Figure 1: Analysis of Advertising During 54 Hours of Children’s Programming: CFBAI Participant Child-Directed Ads/Products That Provide at Least a Good Source of a Nutrient Shortfall for Children or a Food Group to be Encouraged



Nutritional Analyses. We are bringing our recent analysis to your attention because we think it is important for the FTC’s analysis of the nutritional profile of products advertised to children during 2006 compared to those advertised in 2009 to consider, as we did, the nutritional density of products and meals and the food groups they contain. Otherwise, the full range of the nutritional changes in foods advertised to children may be overlooked. For example, the amount of vegetables in a kid’s meal, soup or canned pasta may equal or exceed a half-serving. Information on food group content may not, however, always be discernable from the Nutrition Facts Panel or the label. Accordingly, we recommend that you request information that will allow you to conduct a nutritional density analysis. We also recommend that the FTC nutrition analyses include calculating reductions in calories, fats, sugars and sodium in products advertised by CFBAI participants since 2006, and comparing averages in product categories in 2006 with averages in 2009. Simply looking at broad categories or assessing whether a product is under or over any particular threshold may not reveal the significant amount of change that is occurring.

Marketing Expenditure Analyses. We also recommend that you consider food groups contained in products and meals in looking at *marketing* expenditures. For example, since McDonald’s and Burger King Corporation (BKC) implemented their pledges (in January 2008 and July 2008 respectively) there have been important changes in the kids meals shown in advertising primarily directed to children under 12. McDonald’s

national Happy Meal ads now always feature apple dippers and low-fat milk as the side dish and beverage,⁷ and ads for BKC's Kids Meals now always feature apple fries (fresh apples sliced to resemble fries) and fat-free milk or calcium-fortified apple juice, depending on the featured main dish.⁸

The FTC's July 2008 Report, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities and Self-Regulation* ("FTC 2008 Report"), reported very modest expenditures for dairy products and fruits and vegetables (particularly fruit and vegetables) and much larger expenditures for the "Restaurant Foods" category.⁹ We suggest that you consider all the advertising for fruit (as well as the dairy products the meals may include) being done by two major restaurant chains that are CFBAI participants and that your analyses of marketing expenditures reflect the changes that have occurred since 2006. Perhaps your "Restaurant Foods" category could include a subcategory of products or meals that include at least a half-serving of low-fat dairy, fruit or vegetables or eight grams of whole grains. Similarly, the category of "Prepared Foods and Meals" will include CFBAI participant-advertised products (e.g., soups, canned pastas or meals) that contain, for example, at least a half-serving of vegetables.¹⁰ Using subcategories also could be helpful to show the positive nutritional profile of such products.

Thank you for the opportunity to share our experience in assessing compliance and progress under the CFBAI and to provide comments. If you have any questions about these comments, please feel free to contact me at ekolish@council.bbb.org or 703-247-9382.

Sincerely yours,


Elaine D. Kolish
Vice President and Director
Children's Food & Beverage Advertising Initiative

⁷ McDonald's also advertises meals that meet its BBB-approved nutrition standards consisting of chicken wraps, low-fat yogurt parfaits and water. The parfaits include more than a half-serving of fruit in addition to low-fat dairy.

⁸ From July 2008 until April 2009, low-fat milk was featured. In April 2009, BKC transitioned to fat-free milk in all of its restaurants.

⁹ For television, for children 2-11, the reported expenditure for "Restaurant Foods" was \$91,448,000, while the amount for "Dairy Products" was \$16,105,000 and for "Fruits and Vegetables" it was \$860,000. FTC 2008 Report at Table C. 1.

¹⁰ The reported expenditure for this category for children 2-11 was \$41,566,000. *Id.*