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November 23, 2009

By Electronic Filing

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

Re: Food Industry Marketing to Children and Adolescents Study: Paperwork Comment;
Project No. P094511

Dear Sir or Madam:

Enclosed is the Grocery Manufacturers Association (“GMA”) comment in response to the Federal Trade Commission’s request for comment on the topic of the proposed information request to approximately 45 major food, beverage, and quick service companies.

We appreciate the work the Commission is doing to understand the complexities of this issue and look forward to working jointly to address any concerns.

Sincerely,

/ s /

William C. MacLeod

**Comment of the Grocery Manufacturers Association
Federal Trade Commission Request for Comments
on
Food Industry Marketing to Children and Adolescents Study: Paperwork Comment;
Project No. P094511**

Introduction

The Grocery Manufacturers Association (“GMA”) is pleased to provide these comments for the record in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comment on proposed information requests to approximately 45 major food, beverage, and quick service restaurant (“QSR”) companies (Food Industry Marketing to Children and Adolescents Study: Paperwork Comment; Project No. P094511).¹ The orders will seek information as part of the FTC’s follow-up to the study it published in 2008 regarding food marketing to children and adolescents.

The Commission proposes to seek information in keeping with the 2008 study, as well as additional factors. GMA members responded to the 2007 orders leading to the 2008 study of food marketing to children and adolescents, and are committed to assisting the Commission in this follow-up effort. In this spirit, and in reliance on lessons learned from responding to the 2007 orders, GMA offers a limited number of suggestions to make the data collection and reporting process more efficient and informative.

In summary, GMA recommends that the Commission keep the new orders essentially consistent with the 2007 request, as it was refined during the course of the data collection. GMA also recommends that data collection on the categories that revealed inconsequential spending or extensive estimation be eliminated or consolidated. The burden of complying with the orders was often greatest in the areas of least expense. GMA also recommends that the orders incorporate a limited number of targeted suggestions that could reduce the burden of compliance as well as enhance the quality of the responses.

GMA represents the world’s leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps ensure the safety and security of consumer packaged goods through scientific excellence. The GMA board of directors comprises chief executive officers from the Association’s member companies. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over \$1 trillion in added value to the nation’s economy. For more information, visit the GMA Web site at www.gmaonline.org.

¹ Federal Trade Commission, Agency Information Collection Activities; Proposed Collection; Comment Request, 74 Fed. Reg. 48,072 (Sept. 21, 2009) (“*Notice*”).

The Commission has significantly underestimated the burden of the proposed collection.

GMA believes the cost of complying with the Commission's orders will far exceed the Commission's estimated total cost burden of \$3,675,000 for 45 companies, which amounts to less than \$82,000 per company. A thorough vetting of a company's marketing expenditures to accurately respond to an FTC order requires a substantial dedication of company time and resources. In 2007, GMA submitted a Comment anticipating "expenses associated with collecting the data designated in the Information Request are likely to total \$14 to \$28 million ... [and] [e]stimating that it could cost between \$500,000 and \$1 million per company with multiple products in multiple categories and \$50,000 to \$100,000 for those companies with few products [in] one category."² Having the benefit of experience gained from recently complying with the 2007 orders, GMA believes its estimated total cost burden was conservative in 2007 and anticipates a burden at or above the higher end of the range for responding to a new round of orders.

Before addressing burden, GMA urges the Commission to consider feasibility. The timing of the orders should take into account the ability of the companies to respond. Data for the 2009 calendar year will not be available for most companies until later in the Second Quarter of 2010. Orders that seek information earlier than that will result in incomplete data or estimates – rather than reliable reports. GMA, therefore, submits that the Commission lessen the burden on reporting entities by issuing the orders after March 30, 2010.

While GMA believes the Commission has underestimated the effort and expense required to respond to its proposed request, the orders would provide some relief if the Commission adopted suggestions to tailor the inquiry. The Commission should revise its estimated deadline from 90 days to 120 days to respond. Many, if not most, companies required extensions to comply with the 2007 request, making actual compliance with the 2007 request closer to 120 days than 90 days. Based on input received from member entities, GMA anticipates a similar effort will be required for the upcoming request, and that familiarity with the first request will not materially alter the amount of time required to retrieve, review, and submit data to the FTC.

The additional requirement of providing nutrition information about products the companies marketed to children and adolescents in calendar years 2006 and 2009, to evaluate possible changes in the nutritional content, and variety, of youth-marketed foods, will also lengthen the time required for companies to comply. GMA recommends that the Commission consider collecting samples of labels for products, combined with estimates of the number of products to which the labels apply. As GMA has reported in prior FTC workshops, many thousands of products and sizes have been introduced or reformulated over the last several years. Producing

² Comments of the Grocery Manufacturers Association/Food Products Association, Federal Trade Commission Request for Information and Comment on Food Industry Marketing to Children Report; Paperwork Comment; FTC File No. P064504 (May 18, 2007).

labels reflecting all these changes could impose Herculean tasks on the companies, while analyzing the changes could consume inordinate time and resources of the Commission.

The Commission should adopt orders that will avoid potential over-reporting of money spent to market products to children and adolescents.

GMA believes the Commission should apply the industry-wide and company-specific interpretations it made in the context of the 2007 request to the current orders to facilitate a more reasonable burden on responding companies. For example, the new orders can be drafted in a manner that avoids potential over-reporting of money spent to market products to children and adolescents. The 2007 orders required the reporting of certain expenditures based upon a “30% Children Audience” and “20% Adolescent Audience.” Many programs that met these criteria did not fit any reasonable definition of advertising directed to children or adolescents.

Shows for which seventy percent or eighty percent of the audience are not children or adolescents are difficult to classify as “directed” to children or adolescents. Moreover, some data requests were not linked to any actual or potential audience threshold. Because of the Commission’s overly-inclusive language, companies had to report advertising expenditures on programs that included audience shares of seventy percent, eighty percent, or more that were neither children nor adolescents.

For example, reporting advertising purchased during the “Top 5” television shows attributed advertising spending to children and adolescents even if the purchase was intended, and successfully reached, an adult audience. Similar issues occurred when companies reported spending for in-theatre movies with ratings of “G” or “PG,” or video games with an “E” rating, regardless of the child or adolescent audience share, and when companies reported expenditures in other categories where children and adolescents were unlikely to predominate in the audience.

GMA believes the Commission would receive more accurate data, while lessening the burden on responding companies and the Commission, if all order requests were more closely linked to children and adolescent audiences.

Conclusion

GMA hopes the information contained in this Comment will help the Commission as it seeks to complete its follow-up report. Should the Commission find in the course of its study that the assistance of GMA would be helpful in any way, GMA would be glad to provide it.