Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Interagency Working Group on Food Marketed to Children: FTC Project No. P094513

To Whom It May Concern:

This comment is being submitted on behalf of Saatchi & Saatchi North America, Inc. to voice our grave concerns with the proposed federal ban on advertising foods to those under age 18. Saatchi has, for many decades, served as the advertising agency for some of the nation's best-loved food brands, including brands like Cheerios and Lucky Charms. We are proud of our association with food marketing.

As an initial matter, we would point out that there is no reason to believe that food advertising is responsible for the rise – in recent decades – in obesity. To the contrary, there are several strong reasons to believe this is not true: First, as the FTC's own Bureau of Economics recently concluded, the number of food ads seen by children has actually significantly declined during the period in which obesity was on the rise. Second, while food advertising has been declining, society has undergone massive technological change, resulting in a tremendous reduction in physical activity, which is far and away the more likely explanation for the rise in obesity. Third, several international markets have experimented with advertising bans and none of these bans have reduced obesity, further demonstrating that advertising is not the culprit here.

Moreover, leaving aside for the moment the propriety and constitutionality of banning advertising, such a ban would only make any sense at all if the banned products themselves actually contributed to obesity. But here, the proposed advertising ban bars the marketing of numerous foods that play no role whatsoever in fostering obesity. For instance, the ban being proposed here would bar the marketing of foods like Cheerios, bottled water, and canned vegetables. We would be interested in seeing the agencies' precise scientific basis for banning the advertising of these particular foods. Surely, it is highly inappropriate for the federal government to seriously infringe the economic and constitutional rights of those who market these products without a specific scientific reason for believing that these foods contribute to obesity.

The reality is that these foods do not contribute in any way to obesity. In fact, with respect to cereal in particular, the exact opposite has been proven by several incontrovertible studies. These studies have consistently shown that children who eat cereal frequently (including pre-sweetened cereal) are far less likely to be overweight than those who do not. Children who eat cereal also have better nutrient intakes than those who do not. Cereal packs more nutrients into a low-cost, low-calorie food than probably any other food. And yet virtually all cereals on the market would be barred from advertising to kids under the proposed ban. This will be harmful, not helpful, to public health. And because cereal is the most commonly advertised food to kids, a huge percentage of the proposed advertising ban's impact will be on cereal. Thus, the number one effect of the ban is the government's attempt to suppress consumption of cereal, even though such suppression would clearly harm public health. This is not good public policy.

The advertising ban is also problematic in the manner in which it defines what it means to be "marketing to kids." The definition is incredibly overbroad, prohibiting food manufacturers even from using iconic animated logo characters (like the Pillsbury Doughboy) on their packaging, even when the product is aimed exclusively to adults. Aside from stripping food companies from key intellectual property assets, here are some of the other activities that are deemed to constitute marketing to kids (such that food companies would be precluded in engaging in these activities, except with the rare product that meets the IWG's standards):

- Advertising on television using kid-directed content, even on a show that is not a kid show.
- Advertising on shows with an audience of 30% children ages 2-11 or 20% adolescents ages 12-17. (Thus, up to 80% of the audience can be adults, and the advertising would still be banned.)
- Advertising during a "daypart" or "programming block" containing kid shows, even if the ads run solely on shows that have a 100% adult audience.
- Sponsorship of a public entertainment event (like a sporting event or state fair) that may involve kid-oriented activities.
- Sponsorship of the U.S. Olympic Team (or any other team involving kids under 18).
- Sponsorship of charities that benefit kids (like Special Olympics, March of Dimes, Make-A-Wish, etc.)
- Having a social media page, or YouTube video, where a mere 20% of the audience consists of kids.
- Using an animated figure, like Santa Claus or the Easter Bunny, on a package.
- Employing a celebrity or famous athlete that is "highly popular" with kids.
- Use of the words "child" or "kid" on a package, even in communications to parents like "your child will love this bread."

Thus, this is not just a ban on child advertising – it is a ban on many marketing communications to adults as well. Both because it is unwarranted and unsupported from a public policy standpoint, and also because it is incredibly overbroad, this advertising ban would never survive a First Amendment commercial speech challenge. Recognizing this, the agencies have cleverly sought to avoid judicial review by captioning the regulations as "voluntary" guidelines instead of actual regulations. This is perhaps the most disturbing aspect of this whole initiative. At bottom, we have four federal agencies who have incredible discretionary power over the food industry implementing a massive regulatory burden on the food industry, coercing the industry into complying, and then hiding behind the "voluntary" label to shield the regulations from normal scrutiny and judicial review under the Constitution and the Administrative Procedures Act.

If this is permitted to move forward, there would be nothing to check the power of agencies. They could coercively regulate at will provided that they stop short of formal regulations – and their 'voluntary" regulations would be unchallengeable. This would be an enormously dangerous precedent – and not just with respect to advertising. But certainly, within the advertising industry, we are deeply troubled by the concept that the government could de facto bar advertising of products of which it arbitrarily disapproves, and do so without any mechanism for redress by the affected industry. This is wholly inconsistent with the First Amendment and would also reflect an abuse of power by the agencies involved.

This proposed "voluntary" advertising ban should be discarded.