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June 10, 2011

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Interagency Working Group on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts, Project No. P094513

To Whom It May Concern:

Food & Water Watch is a non-profit consumer advocacy organization. F&WW appreciates the opportunity to comment on the Interagency Working Group on Food Marketed to Children, Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts, Project No. P094513.

One in three American children are overweight or obese,[1] and food advertising directed at children undermines efforts to encourage healthy eating at home and distorts children's perceptions of a healthy diet. It is time to limit junk food advertising aimed at children.

We applaud the Interagency Working Group on Food Marketed to Children's efforts to create strong Preliminary Proposed Nutrition Principles, based on the Dietary Guidelines, against which food marketing to youth can be evaluated. But industry self-regulatory efforts are insufficient to substantially change the content of food marketing to children. Most food marketed to children is still unhealthy, even after several years of industry self-regulation. We urge the Federal Trade Commission and Congress to make these standards mandatory for all food marketed to children and adolescents, in all forms.

Impact of Food Marketing on Children and Adolescents

The opening paragraph of this comment states, "marketing can be an effective tool to encourage children to make healthier food choices." In practice, most food marketed to children is unhealthy, high in fat, added sugar, and sodium.[2] Food advertisements use emotional appeals to portray their brands as fun or cool to youth. Advertisements less frequently address taste, quality, or nutrition—actual characteristics of the food itself. The advertisements do not address any negative outcomes of unhealthy eating; it is assumed that any one food advertised will be consumed in moderation. The totality of ad exposure, however, represents nothing moderate at all.[3]

Because the vast majority of food advertised to children is unhealthy, the Institute of Medicine (IOM) reports, "it can be concluded that television advertising influences children to prefer and request high-calorie and low-nutrient foods and beverages."[4] While many factors affect children's diets and food preferences, several studies have found that food advertising has a specific effect separate from those factors.[5] Food advertising on television impacts children's preferences for particular categories and brands of food[6] and increases their requests to parents for the advertised foods.[7] Additionally, food advertising leads to increased consumption of unhealthy foods.[8] Unhealthy snacking while watching television is common, and viewing food advertising causes greater snack food consumption.[9] While teenagers can better understand the persuasive intent of advertising,[10] there is evidence that they need prompting to think critically about advertisements during the time of viewing for the advertisement not to have a persuasive effect.[11]

There is little research on the impacts of online food advertising to youth, though it has become increasingly common. Yet, it warrants concern. According to the IOM, "given widespread recognition that the boundaries between commercial and noncommercial content are more blurred on the Internet than in traditional print, radio, or television media, there is some reason to expect a delay in the development of children's ability to recognize advertising on the Internet as compared to other media."[12] Other more subtle forms of marketing, such as product placements, further blur the line between content and advertising, undermining older children's ability to identify the advertising.[13]

The food industry touts its own efforts to change food marketing to children, but these efforts are limited. The standards for the Children's Food and Beverage Advertising Initiative (CFBAI), for instance, only apply to marketing to children under the age of 12 and rely on each food company to set its own standards for what constitutes "better for you" foods that are appropriate to market to young children.[14] An evaluation of food marketed to children before and after the implementation of CFBAI found only a slight decrease in the marketing of unhealthy foods to children. In 2009, 72.5 percent of foods marketed to children were unhealthy foods, as determined by the U.S. Department of Health and Human Services' "Go-Slow-Whoa" food rating system, compared to 84 percent in 2005.[15] Of advertising by companies participating in CFBAI, 68.5 percent of advertisements featured unhealthy foods, those that the HHS standard determined should only be consumed occasionally as treats, while only 1 percent of food advertising by those companies met the standards of healthy foods that children should be encouraged to eat on a regular basis.[16] And, yet, according to the study, the companies involved were all meeting their pledges. The efforts have simply not been enough to make a substantial change in the overall content of food marketing to young children.[17]

According to a recent article in the *American Journal of Public Health*, "Governance by all stakeholders, transparency in creating standards, and external, objective evaluation of impact appear to be at the heart of the self-regulatory successes seen in some industries. These conditions do not prevail in current food industry self-regulation."[18] Establishing the Preliminary Proposed Nutrition Principles provides an important baseline standard for the

types of foods that are appropriate to market to children. Should the food industry choose to follow these standards, the content of food advertising to children and adolescents should improve significantly. That is why we believe voluntary standards are insufficient.

We offer the following responses to the questions posed by the working group:

Proposed Nutrition Principles: General Questions

1) The Nutrition Principles should apply the same stringent standards across both the 2 to 11 and 12 to 17 age groups. The diet-related health challenges for all youth, the scientific evidence that youth of all ages are susceptible to food marketing, and the evidence that current food marketing to youth is mainly for unhealthy foods all warrant this approach. The Principles also highlight the importance of reformulating processed foods to include less fat, sugar, and salt, and it would be burdensome to food manufacturers to have separate standards for two age groups.

2) If advertising is for a particular food brand or children's menu at a restaurant, without reference to specific foods, all foods included in the brand or menu should meet the nutrition standards.

4) In order for either option list to work most effectively, the Working Group should include a standard for recommended serving sizes to be displayed in marketing. Children's dietary needs vary significantly based on age and activity level. The Principles already reflect a baseline of a 2,000-calorie diet. Serving sizes portrayed in marketing should at the very least represent an appropriate serving size for a meal or snack in a 2,000-calorie diet.

Food Categories

5) The Principles should cover all foods marketed to children, not just the top ten categories as proposed. Leaving a loophole in the Principles offers an opportunity for advertisers to shift their focus to other products and still claim to meet the new standards, while applying the standards to all foods marketed to children offers the best opportunity to improve their overall nutrition profile.

Main Dishes/Meals

7) At minimum, all items from restaurant children's menus shown in marketing to children should meet the Principles. If advertising is for a particular children's menu, without reference to specific foods, all foods included in the menu should meet the nutrition standards.

General Feasibility/Marketplace Impact of Proposed Nutrition Principles

21) This question presupposes that reformulation is the only option to meet the Principles. However, there is another option companies can take: choosing not to market certain products to children and adolescents. There is precedent for this decision by food companies. As part of the CFBAI, four food companies—Cadbury Adams, Coca-Cola, Hershey's, and Mars—pledged to end marketing their products to children under the age of 12.[19] The Principles should not be weakened with exceptions for particular products that may never be reformulated to meet a reasonable standard for healthy food. The better alternative is to keep the Principles strong and forbid advertising to youth for foods that cannot meet these standards.

Definition of Food Marketing Targeted to Children

23) The Working Group's broad definition of marketing—including "in-school marketing and social media, such as the Internet, digital word of mouth, and viral marketing"—appropriately addressed the wide scope of food marketing directed towards youth. This question proposes limiting application of the Principles in such a way that television viewing by adolescents would not be included. Yet, adolescents watch a lot of television, which includes significant exposure to advertising. According to a recent study by the Kaiser Foundation, youth ages 11 to 14 watch just over 5 hours of television per day, including 3 hours of live television, and youth ages 15 to 18 watch nearly 4.5 hours of television per day, including nearly 2.5 hours of live television.[20] Overall, of all forms of media exposure, youth spend the most time watching television. Excluding television from the Principles' application on marketing directed to adolescents would eliminate a significant source of advertising exposure. The Working Group should proceed with the proposed definition, utilizing the FTC's definition of television targeted to adolescents based on audience share.

Overall Impact of Proposed Nutrition Principles and Marketing Definitions

30) Because the Principles are voluntary, they do not raise commercial speech issues. The food industry is not mandated to change either its marketing practices or food formulations. Rather, the Principles offer a standard against which to measure the health of foods marketed to children and encourage companies to make improvements.

The 1980 Supreme Court case *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York* established that commercial speech could be regulated if it is deemed false, misleading, or deceptive.[21] The Supreme Court has also identified children's rights to protection as different from that of adults due to "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."[22] Food marketing to children exploits their difficulty distinguishing between programming content and advertising in various media settings.

In 1978, the FTC examined regulating food marketing to children in part due to concern over the impact of sugary foods on children's dental health.[23] During "KidVid," as the rule-making process was known, the FTC considered banning all television marketing to children under age eight and targeted "sugary foods" as unacceptable to market to children under age eleven.[24] The food industry fought these regulations, spending $16 million lobbying on the issue.[25] In 1980, Congress passed the FTC Improvements Act, which specifically removed FTC's authority to regulate food marketing to children as unfair. However, it left FTC the ability to regulate deceptive practices in food marketing to children.[26]

Researchers and advocates have argued that advertising to young children is inherently misleading because children cannot understand the persuasive intent of advertising.[27] The Institute of Medicine has already recommended, "If voluntary efforts related to advertising during children's television programming are unsuccessful in shifting the emphasis away from high- calorie and low-nutrient foods and beverages to the advertising of healthful foods and beverages, Congress should enact legislation mandating the shift on both broadcast and cable television."[28] There is legal precedent for limiting advertising of harmful products, such as alcohol and tobacco, to children. It has become increasingly clear that the public health impacts of television advertising for food are too great to ignore, and initial research on online marketing and other indirect media have found similar effects. Congress should mandate that food marketing to youth be limited to meet the Principles established in this voluntary standard.

Thank you for your consideration of these comments.

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Wenonah Hauter
Executive Director

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[1] American Heart Association. "Overweight in Children." Available from http://www.heart.org/HEARTORG/GettingHealthy/Overweight-in-Children_UCM_304054_Article.jsp. Downloaded May 25, 2011. March 29, 2011.

[2] See Holt, Debra, et al. "Children's Exposure to TV Advertising in 1977 and 2004: Information for the Obesity Debate." Federal Trade Commission Bureau of Economics Staff Report. June 1, 2007; Batada, Ameena, et al. "Nine out of 10 food advertisements shown during Saturday morning children's television programming are for foods high in fat, sodium, or added sugars, or low in nutrients." *Journal of the American Dietetic Association,* Vol. 108. 2008; Harrison, Kristen, and Amy Marske. "Nutritional content of foods advertised during the television programs children watch most." *American Journal of Public Health*. Vol. 95, Iss. 9. September 2005.

[3] Harrison and Marske at 1572-1573.
[4] McGinnis, J. Michael, et al, Editors. *Food Marketing to Children and Youth: Threat or Opportunity?* National Academy of Sciences. Committee on Food Marketing and the Diets of Children and Youth. 2006 at 260-261.
[5] Hastings, Gerald, et al. "Review of the research on the effects of food promotion to children." Final Report Prepared for the UK Food Standards Agency. University of Strathclyde Institute for Social Marketing. September 22, 2003 at 3.
[6] Harris, Jennifer, et al. "A crisis in the marketplace: how food marketing contributes to childhood obesity and what can be done." *Annual Review of Public Health.* Vol. 30. April 2009 at 213; Harris, Jennifer, et al. "Priming effects of television food advertising on eating behavior." *Health Psychology*. Vol. 28, Iss. 4. July 2009 at 404; Harris, Jennifer, and John Bargh. "Television viewing and unhealthy diet: implications for children and media interventions." *Health Communication*. Vol. 24. 2009 at 661; Cairns, Georgina, et al. "The Extent, Nature, and Effects of Food Promotion to Children: A Review of the Evidence to December 2008." Institute for Social Marketing, University of Stirling and The Open University, United Kingdom. Prepared for the World Heath Organization. December 2009 at 2-3; Moore, Elizabeth, and Richard Lutz. "Children, advertising, and product experiences: a multimethod inquiry." *Journal of Consumer Research.* Vol. 27. June 2000 at 44-45.
[7] Harris, et al. April 2009 at 213; Harris and Bargh at 661.
[8] Hastings at 2; Harris and Bargh at 661; Cairns, et al., at 2-3; Harris, et al. July 2009 at 404.
[9] Harris and Bargh at 661.
[10] Livingstone, Sonia, and Ellen Helsper. "Does advertising literacy mediate the effects of advertising on children? A critical examination of two linked research literatures in relation to obesity and food choice." *Journal of Communication*. Vol. 56. 2006 at 562.
[11] Pomeranz, Jennifer. "Television food marketing to children revisited: the Federal Trade Commission has the constitutional and statutory authority to regulate." *Journal of Law, Medicine, and Ethics.* 2010 at 99.
[12] McGinnis, et al., at 296.
[13] Pomeranz at 99.
[14] Federal Trade Commission. "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation." A Report to Congress. July 2008 at ES-7; Sharma, Lisa, et al. "The Food Industry and Self-Regulation: Standards to Promote Success and to Avoid Public Health Failures." *American Journal of Public Health*. Vol 100, No. 2. February 2010 at 241.
[15] Kunkel, Dale, et al. *The Impact of Industry Self-Regulation on the Nutritional Quality of Foods Advertised on Television to Children.* Commissioned by Children Now. December 2009 at 5-7.
[16] *Ibid*. at 22.
[17] *Ibid*. at 35.
[18] Sharma, et al., at 245.
[19] Kunkel at 23.
[20] Rideout, Victoria, et al. "Generation M^2: Media in the Lives of 8- to 18-Year-Olds." Kaiser Family Foundation. January 2010 at 16.
[21] Pomeranz, at 101.
[22] *Ibid*. at 104.
[23] *Ibid*. at 100.
[24] *Ibid*. at 104.
[25] Mello, Michelle, et al. "Obesity — the new frontier of public health law." *The New England Journal of Medicine*. Vol. 354, Iss. 24. June 15, 2006 at 2610.

[26] Pomeranz at 101.
[27] *Ibid*. at 103.
[28] McGinnis, et al., at 14-15.