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July 14, 2011

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

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

Dear Secretary Clark:

Kraft Foods Global, Inc. (Kraft Foods) appreciates the opportunity to submit our comments on the Interagency Working Group (IWG) proposal for Marketing to Children.

Kraft Foods is the second largest food company in the world, with annual revenues over \$49 billion. Our products are found in 99% of American households, and millions more homes in 170 countries around the world. The trust and confidence of consumers, retail customers, and government officials are of the highest importance to us and we work to earn that trust every day. Responsibly marketing our products is one of the most important ways we earn consumers' trust, and this is particularly true of the select brands we market to children.

I. THE FOOD AND BEVERAGE INDUSTRY IS COMMITTED TO MARKETING RESPONSIBLY TO CHILDREN

Kraft Foods believes that food and beverage companies should market responsibly to children. In fact, Kraft Foods was the first company to independently set nutrition standards worldwide for products advertised to children ages six to eleven. We do not market our products to children under age six. Over the years, we have also taken a number of steps to further limit our marketing activities to children, including eliminating all marketing in schools. In addition, we have worked with others in the food and beverage industry to improve the nutrition of products that are advertised to children. We were one of the first companies to join the Children's Food and Beverage Advertising Initiative (CFBAI), now a coalition of 17

companies in the United States committed to voluntary standards for marketing to children.¹

The food and beverage industry has made significant advances to change the nutrition profile of the products it advertises to children. Many foods are no longer advertised to children, and many foods that are advertised have been substantially improved. CFBAI members have reformulated or created numerous products to meet nutrition standards for advertising to children. For example, Kraft Foods recently introduced a new 2% Milk Reduced Fat Cheese Twists string cheese product that we advertise to children.

In addition to these improvements and reformulations, children's exposure to television ads for the food categories highlighted by the IWG has decreased dramatically from 2004 to 2010. For example, according to a Georgetown Economic Services study, children's exposure to ads for snack foods decreased by approximately 71% between 2004 and 2010.² It is no coincidence that this decline corresponds with the launch of CFBAI.

Moreover, CFBAI is not a static organization; members are committed to continued progress. In addition to expanding membership, it continues to assess and refine its program. In 2010, members agreed to expand the media covered by CFBAI's principles. In 2011, members agreed to adopt uniform nutrition criteria, which are described in detail in CFBAI's comments.

Kraft Foods believes we can continue to meet consumers' expectations for marketing to children in a responsible and practical way as the industry's policies and practices continue to evolve. However, we are concerned that the marketing definitions of the IWG proposal, especially when coupled with the unduly restrictive nutrition criteria, do not support the progress that has been made through industry initiatives to date and will not encourage future progress. In particular, the IWG proposal defines "marketing to children" far too broadly in two critical ways: (1) the audience definitions include marketing directed to adolescents and adults and (2) many of the specific marketing vehicles included are primarily all-family, and/or are seen by children only in the presence of, or after being purchased by, their parents. In the comments that follow, we provide an overview of our position on the IWG proposal and then directly address some of the specific questions posed by the IWG.

II. IWG AUDIENCE DEFINITIONS ARE TOO BROAD

The rationale for any form of self-regulation in this area is based on the assumption that children are a particularly vulnerable audience who warrant special treatment. This rationale does not apply to adolescents or adults. Yet, the proposed definitions

¹ This document represents the consolidated opinion of 2 of the 17 companies, Kraft Foods and Cadbury Adams USA, LLC (Cadbury). Kraft Foods recently acquired Cadbury, and Cadbury will complete its transition to the Kraft Foods' Pledge by the end of this year.

² *Georgetown Economic Services (GES), Food and Beverage Advertising 2004 and 2010: Children's Impressions and Expenditures on Children's Programs (2011)*

treat adolescents as if they were indistinguishable from young children and restrict marketing that is clearly directed at adult audiences.

A. Marketing Directed to Adolescents Generally Should Not Be Subject to Restrictions

Kraft Foods believes the IWG proposal to include adolescents in the definition of “marketing to children” is unrealistic. Six-year-olds process commercial information very differently from 16-year-olds. Teenagers possess the cognitive abilities to distinguish between commercial and non-commercial messages.³ The IWG proposal does not account for these differences and assumes that teenagers need to be protected from information because they are unable to make informed decisions in response to advertising messages.

Further, our society affords adolescents a broad range of responsibilities and freedoms that acknowledge their ability to make significant decisions. For example, 16-year-olds can drive, hold a job, pay taxes, and, in certain situations, be tried as adults for criminal activities. It is contradictory to suggest that individuals who society regards as capable of handling such important responsibilities should be subject to restrictions on the food and beverage advertising they are permitted to see.

Despite our objections to the inclusion of adolescents in the audience definition, our own corporate policy is generally aligned with the IWG proposal for restrictions on in-school marketing. Kraft Foods refrains from this type of marketing from pre-school through high school. However, our position is based on the fact that school attendance is compulsory and our belief that the school environment is a place for learning rather than for commercial messaging, not because adolescents need to be protected from certain food and beverage advertising. The definition of in-school marketing, however, should not be so broad as to prevent food and beverage companies from providing philanthropic support for schools or to prevent the sale of products in school.

B. The IWG Adolescent Audience Threshold Would Restrict Adult-Directed Marketing

The IWG proposal to classify an audience with 20% of adolescents as a teen audience will include media directed at an adult audience because the percentage is too low. For example, Kraft Foods buys advertising directed to adults on certain MTV day parts. The average MTV Primetime viewership among ages 12-17 in 2010 was 22% and viewership for 18+ was 71%.⁴ Under the IWG proposal, advertisers like Kraft Foods would have to severely limit the products they can advertise during a day part clearly dominated by adult viewers. As a result, we would not be

³ Teens can perform similar to adults in their ability to make reasoned decisions about complex issues in research settings. C. Pechmann, L. Levine, Sa. Loughlin, and F. Leslie, Impulsive and Self-Conscious: Adolescents’ Vulnerability to Advertising and Promotion, *Journal of Public Policy & Marketing* 24: 202-221 2005.

⁴ Nielsen Galaxy 2011

permitted to advertise products such as *Crystal Light* and *Breakstone's* cottage cheese on MTV programs primarily viewed by adults.

III. MANY OF THE MARKETING ACTIVITIES IDENTIFIED BY THE IWG PROPOSAL ARE NOT CHILD DIRECTED

Many of the marketing activities identified by the IWG as "child-directed" are really all-family and multi-generational, and are aimed at parents or a general audience, not primarily children. Including activities and vehicles such as sponsorship of public entertainment events, athletes and sports teams inappropriately curtails advertisers' abilities to speak with an audience that is significantly broader than children. In addition, the proposed marketing standards fail to consider the presence of parents and their decision-making authority.

A. Celebrity/Athlete/Sports Team Endorsements

Under the IWG proposal, a sports figure, sports team or celebrity is considered child-directed because they are "highly popular with children." This definition disregards the reality that when a winning team, star athlete and recording artist are in the media and popular with adults, they are also popular with children. The IWG proposal would prevent Kraft Foods from using many sports figures, teams and celebrities in marketing campaigns regardless of where and when the ads run just because these individuals have broad audience appeal. For example, we would be prohibited from using a star football player to promote *Triscuit* crackers just because he is popular with children as well as adults. This restriction would limit our general adult marketing unnecessarily.

B. Licensed Characters

We believe the proposed IWG restrictions on licensed characters are too broad. Though many licensed characters, including animated characters, are trans-generational, their use under the proposed IWG definitions would be restricted. For example, Kraft Foods would not be able to offer discounts to performances of *Disney on Ice* on our dairy products, just because Mickey Mouse is part of Disney's logo.

C. Packaging and In-Store Marketing Vehicles

We believe that packaging and in-store advertising should not be subject to marketing restrictions because adults are the primary shoppers, and ultimately the ones who make purchasing decisions, in grocery stores. According to the latest TNS Shopper 360 study (2009), only 15% of shoppers brought their children on their shopping trip (all channels/US).⁵ Moreover, child exposure to in-store or on-pack "marketing" typically occurs in the presence of an adult or after an adult has made a purchase decision.

⁵ This percentage varies by channel: in Grocery 12% of shoppers brought their children along; in Supercenter it was 20%.

The proposal to include packaging as a form of marketing to children is particularly problematic. Even if the IWG offered clear guidance in this area, the premise that companies operating in a competitive economy would voluntarily sell products intended for consumption by children in packages that are unattractive to them is commercially unviable. More importantly, we use themes, art and design appealing to children on our packaging as cues to parents that their children may like our products. The inclusion of packaging under the IWG proposal would restrict our ability to communicate with parents about how our products would appeal to their children or the whole family.

D. Philanthropic Activities

Under the IWG proposal, philanthropic activities sponsored by food and beverage companies or their brands would be curtailed or, in some cases, eliminated. Many of these activities are designed to encourage healthy lifestyles among families and do not contain any commercial messages.

Kraft Foods and its Foundation have partnered with such non-profit organizations as Kaboom!, YMCA of the USA, the National Latino Children's Institute and Girl Scouts of the USA to provide much-needed healthy lifestyle programming, particularly in underserved communities.

Based on the IWG proposal, these efforts would be prohibited because they involve child-oriented activities or seek participation by children.

IV. ANSWERS TO SPECIFIC QUESTIONS

We are taking this opportunity to answer some of the marketing questions outlined in the IWG proposal. We have focused on those questions where we believe we offer specific expertise. For questions 1 through 17, please refer to our comments on the proposed nutrition principles, which we have submitted separately as requested by the IWG.

Q. 18, 20 and 21

IWG seeks input on the feasibility and potential impact of the proposed voluntary principles and whether manufacturers will view them as an incentive to improve the nutritional quality of the foods marketed to children. If not, are there alternate principles that IWG should consider?

Although some of the ambiguity in the IWG's proposed criteria makes it challenging to calculate precisely, a very small percentage of the products currently advertised to children meet the criteria. This would not change significantly over the implementation period proposed by the IWG because the criteria are too stringent for food manufacturers to meet while maintaining food safety, technical functionality, and taste. Consumers will not compromise on these issues and neither will we.

Stringent, but realistic, nutrition criteria give food and beverage manufacturers an incentive to continue their ongoing work to improve the nutrition of their products marketed to children. Nutrition criteria that are beyond the reach of technology and product development for certain products or categories eliminate a major incentive for food companies to invest in and pursue continued nutrition improvements. Food companies that adopt these overly restrictive criteria will not have any feasible means of achieving them, and as a result, will be precluded from marketing many of their more nutritious products to children. On the other hand, those that choose not to adopt the criteria (because they are too strict) will not be subject to *any* restrictions. As a result, the IWG's goal of encouraging marketing of healthier products will not be achieved. More importantly, eliminating a significant incentive for companies to improve the nutrition quality of their foods could mean that the overall nutritional quality of products intended for children would not improve as quickly.

We believe a better approach than the IWG proposal is the consistent, achievable nutrition criteria for marketing to children embodied in the new industry-wide CFBAI principles, which Kraft Foods intends to adopt. These criteria are generally more restrictive than current individual company pledges, but still achievable in the coming years with continued technology and product development advances. Adoption of these criteria by the food and beverage industry fosters the goal of improving the products that are marketed to, and consumed by, children.

Q. 19 IWG asks if certain foods warrant special considerations or exceptions within the proposed nutrition principles.

While there are some especially surprising examples of foods that do not meet the proposed nutrition criteria--such as water, 2% milk, low-fat cheese and reduced-fat peanut butter--the larger problem is the IWG's "one size fits all" approach. We agree that the industry should adopt voluntary, uniform nutrition criteria, but disagree with the IWG approach, which sets overall limits without any consideration of the differences between various categories of food and their role in the diet.

Accordingly, the CFBAI approach sets limits and requirements based on 10 distinct categories, each of which is consistent with established government and scientific standards for sound nutrition. These categories cover all foods currently marketed to children, except candy and soda (which are not advertised to children by any CFBAI participants), and can be expanded or modified in the future.

Q. 22 IWG seeks feedback as to whether interim target dates should be established for meeting the goals by the proposed dates.

Even with the proposed implementation dates, the IWG principles are not realistic. For example, the sodium targets are far beyond current technical feasibility. There is insufficient science to suggest, and therefore no reason to believe, that the IWG's sodium targets will be feasible by 2016 or 2021. This approach might make sense if the goal was to phase out marketing of almost all food products to children over time. We do not, however, understand that to be the IWG's aim.

By comparison, CFBAI participants have agreed to make formulation changes in products advertised to children in order to meet the CFBAI's new uniform nutrition criteria by December 31, 2013, or to discontinue advertising products that do not meet the new criteria by that date. Further, CFBAI's new uniform criteria are based on the current Dietary Guidelines. As new guidelines are published in 2015, CFBAI and its members will reevaluate the criteria and assess the potential for continued refinements, just as the CFBAI has continued to make changes in its guidelines over the past several years.

Q. 24 IWG asks for input on the objective and subjective criteria put forth by the FTC and whether they accurately capture child-directed marketing activities.

The objective and subjective criteria in FTC's 2008 Food Marketing Report are vastly over-inclusive. Contrary to the suggestion that those criteria were "vetted," they have been consistently and strenuously objected to and criticized by industry and others.

As discussed elsewhere in our comments, the proposed definitions fail to account for a variety of important factors, including (a) the role of parental presence when children are exposed to marketing messages (of particular significance with regard to packaging, in-store marketing, and event marketing), (b) the differences between younger children and adolescents, and (c) the impact that the definitions would have on marketing vehicles intended for adults.

For example, marketing activities such as celebrity endorsers, packaging, sponsorship of sports teams, athletes and entertainment events are considered be directed to children if these activities involve "child-directed features" or "child-oriented themes, activities, incentives, products or media." "Child-directed features" as defined by the IWG include simply using the words "kid," "child" or "tween," and also include the use of a photograph of someone under the age of 12. Photos of children and use of the word "kid" or "child" are commonly used in adult marketing efforts to tell parents that their children would enjoy the product or that it is an all-family product. Under the IWG proposal, however, we would not be able to show a picture of a child eating a spoonful of pudding on our packaging, or use a photograph of a child eating a grilled cheese sandwich on point-of-sale materials for *Kraft Singles*.

"Child-oriented themes, activities, incentives, products or media" often directly overlap with all-family events. Kraft Foods sponsors numerous festivals and fairs where we set up cooking demonstrations and send our iconic Oscar Mayer Wienermobile. Many of these events have areas or activities that appeal to children. Although our cooking demonstrations are not part of the children's areas, the IWG's proposed definitions would consider these events in their entirety to be child-directed. We also have had tie-ins with space centers, amusement parks and theme parks that are all-family venues. Under the IWG proposal, we could not

offer promotions for discounted tickets to these venues (a type of promotion clearly directed to adults) because the venues have activities enjoyed by the whole family.

Q. 25 and 26

These questions concern the use of population based audience percentages as a means to determine whether measured media is directed at children or adolescents and whether audience percentages is generally the right approach.

We do not understand the relevance of doubling the population of an age group to determine if media is directed to them. It has no correlation with the actual media consumption occurring with any given marketing vehicle. Under the IWG's rationale, an advertisement on a television show with 3.4% viewers ages 85 or older would be deemed targeted to them, just because adults 85 or older comprise an estimated 1.7% of the U.S. population.⁶ The population doubling seems arbitrary -- populations could just as easily be tripled or quadrupled to arrive at a measurable percentage.

Nevertheless, we agree that the use of audience percentages is the right approach to discern whether a marketing vehicle is child directed. The percentage threshold used, however, must reflect that the marketing is directed at children. It should not be so low as to sweep in a significant amount of adult media. The percentage should be based on actual media consumption used in current media buying practices, as opposed to population figures, to truly understand who is seeing and hearing the commercial messages. We believe the appropriate percentage threshold to determine children's advertising is 35% -- roughly one-third of the viewing audience. We have used 35% percent for a number of years and find that it correlates well with media truly directed to children without significantly overlapping with all-family media or adult media.

The advantage of using percentages is that they are purely objective criteria, easy for companies to implement and easy for outside parties to monitor. The only caveat is that compliance should be assessed based on composition at the time of purchase, not at the time of viewing, as that will truly capture the intent of the media buy.

With respect to adolescents, we believe that they are not proper subjects of voluntary restrictions on media. As a company that directs the vast majority of its marketing spending to adults, Kraft Foods is concerned about the unintended restrictions on marketing to adults that the IWG's proposal would entail. Restriction of media based on a 20% audience share of teens will undoubtedly include adult programming and marketing aimed at adults, such as the MTV example mentioned earlier.

⁶ U.S. Census Bureau. *2005-2009 American Community Survey 5-Year Estimates*, available at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS.

Q. 27 IWG inquires whether the subjective criteria developed by FTC for use in unmeasured media are accurate in defining child and adolescent directed marketing activities.

We believe the subjective criteria for unmeasured media used in the FTC report are not sufficiently clear and reach much too broadly. We believe that much of the unmeasured media targeted for restrictions, such as packaging and in-store advertising, should be eliminated from the proposal completely because, as discussed above, adults are the primary shoppers at grocery stores, and child exposure to such "marketing" occurs only in the presence of an adult or after an adult has made a purchase decision.

In addition, the IWG recommendation that height or placement of displays should be restricted is not practical and would require a complete overhaul of how grocery store displays and shelving are managed. Kraft Foods' shelving and assortment strategies vary by category of business and are grounded in multi-faceted category management principles.

Kraft Foods does agree with the IWG proposal that companies should use their marketing plans to determine what does, and does not, constitute marketing to children in unmeasured media. Marketing plans are often the best subjective measure as they are generally informative on which audience a particular marketing vehicle is intended to reach. However, a marketing plan that discusses all-family initiatives should not be treated as an indication of intent to primarily market to children.

We believe the current criteria outlined in the CFBAI core principles statement for certain unmeasured media represent the right degree of specificity. For example, CFBAI considers video and computer games primarily directed to children under 12 if they are rated "Early Childhood" or are age-graded on the label or packaging as being primarily directed to children under 12.⁷ CFBAI measurements are based on objective criteria and, where objective criteria are unavailable or to supplement such criteria, marketing intent.

V. CONCLUSION

We appreciate the opportunity to provide our perspective on this critical issue. In addition to our own comments, we support those filed by CFBAI. Kraft Foods, like the IWG, is committed to responsible marketing to children, and we support policies that may have a positive impact on childhood obesity. However, as noted in our comments, we believe the recommendations in the IWG proposal are far too broad and create unwarranted restrictions on marketing to audiences beyond children.

Through CFBAI, we continue to raise the bar for responsible marketing to children. To date, the self-regulatory efforts of the industry and CFBAI have resulted in

⁷ Additionally, CFBAI principles do not encompass all-family marketing such as sporting events where some children may be present, but they are not the primary audience; those who do attend are in the company of a parent or guardian who is vetting any marketing communication.

substantial improvements in the overall nutrition profile of foods marketed to children. In fact, over the past few years industry has made extraordinary changes in what and how it advertises to children. Further progress will be achieved with the new CFBAI standards for uniform industry criteria, and we believe the IWG should endorse this continued progress and call on others to join CFBAI or adopt its principles.

Thank you for your consideration of our comments.

Sincerely,

Rhonda Jordan
President, Health & Wellness and Sustainability
Kraft Foods Global, Inc.