



COUNCIL OF BETTER BUSINESS BUREAUS, INC.

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January 19, 2007

Mr. Donald Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Request for FTC Advisory Opinion on Children's Food and Beverage Advertising Initiative

Dear Mr. Clark:

I am writing on behalf of the Council of Better Business Bureaus to request an advisory opinion concerning an initiative that will be administered by the Council of Better Business Bureaus to encourage increased advertising of healthier dietary choices and healthy lifestyles to children under 12. We are seeking an opinion as to whether any element of the proposed program is likely to result in an enforcement action by the Commission under Section 5 of the Federal Trade Commission Act or other Federal antitrust laws.

The Council of Better Business Bureaus ("CBBB") is the national organization for the Better Business Bureau ("BBB") system. The BBB system is dedicated to fostering trust between businesses and consumers, and since its beginning in 1912 has grown to become the most trusted name and recognized advocate for promoting ethical business and advertising practices.

The CBBB administers the advertising industry's voluntary self-regulation program, which includes the National Advertising Division ("NAD") and the Children's Advertising Review Unit ("CARU"). NAD is responsible for resolving complaints or questions involving the truth or accuracy of national advertising. CARU was established as a self-regulatory program to promote responsible children's advertising; CARU sets high standards for the industry to assure that advertising intended for children is not deceptive, unfair, or inappropriate for its intended audience. Information about these programs can be found at www.narcpartners.org.

In recent years, regulatory authorities and advocacy groups have expressed concerns about increasing childhood obesity in the United States. They have urged the food and beverage industry to take responsible self-regulatory steps to change the mix of messages in food and beverage advertising directed to children, and also to address other related

concerns that include use of certain marketing techniques such as advergames, use of licensed characters to promote food and beverage products, product placement, and marketing of food and beverage products in schools. The Council of Better Business Bureaus and the National Advertising Review Council conducted a review of CARU standards to determine if they should be modified to address these issues. As a result of this review, it was determined that the best solution was to create a new initiative focused on increasing the advertising of healthier dietary choices and healthy lifestyles to children.

The *Children's Food and Beverage Advertising Initiative* ("Initiative") was created to address the above concerns. The goal of the Initiative is to shift the mix of advertising messaging to children to encourage healthier dietary choices and healthy lifestyles. In order to participate in the Initiative, advertisers must agree to do the following for advertising primarily directed to children under 12:

- Devote at least half their advertising on television, radio, print and Internet to promote healthier dietary choices and/or to messages that encourage good nutrition or healthy lifestyles.
- Limit products shown in interactive games to healthier dietary choices, or incorporate healthy lifestyle messages into the games.
- Not advertise food or beverage products in elementary schools.
- Not engage in food and beverage product placement in editorial and entertainment content primarily directed to children under 12.
- Reduce the use of third-party licensed characters in advertising that does not meet the Initiative's product or messaging criteria.

The Initiative will be staffed by the CBBB. An overview of the Initiative is attached.

Participation in the Initiative is open to any food/beverage advertiser. As of this writing, the following companies have agreed to participate: Cadbury Schweppes USA; Campbell Soup Company; The Coca-Cola Company; General Mills, Inc.; The Hershey Company; Kellogg Company; Kraft Foods Inc.; McDonald's; PepsiCo, Inc.; and Unilever.

Under the terms of the Initiative, participants will create an individual company "Pledge" that will commit the company to devote a specified percentage (but not less than 50%) of its advertising to children under 12 to (1) products that represent healthy dietary choices in accordance with standards consistent with established scientific/government standards, and/or (2) advertising that prominently includes healthy lifestyle messages designed to appeal to the intended audience. The Pledge will be developed by individual participants in consultation with Initiative staff. The Initiative will monitor compliance with each company's Pledge by reviewing advertising materials, product information, and media impression information submitted by each participant. Information submitted by participants on a confidential basis will not be shared with other participants or outside groups. The Initiative will publicly disclose the results of its monitoring, and will

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develop procedures for expulsion of a participant that does not comply with its Pledge. Any expulsions will be publicly disclosed, with a referral made to regulatory authorities.

The CBBB requests that the FTC examine the elements of the proposed Initiative and provide an advisory opinion with respect to whether any element of the proposed program is likely to result in an enforcement action by the Commission. We believe that the Initiative raises no anti-competitive issues, and believe that it will provide significant pro-competitive benefits to the American public by encouraging the development and selection of healthier dietary choices and lifestyles.

Thank you for your attention to this important request.

Sincerely,



Alan L. Cohen
Vice President and General Counsel

Cc: Chairman Deborah Platt Majoras
Jeff Schmidt, Director, Bureau of Competition
Lydia Parnes, Director, Bureau of Consumer Protection
Mary Engle, Associate Director for Advertising Practices
Steve Cole, President and CEO, Council of Better Business Bureaus