

June 7, 2005

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Food Marketing to Kids Workshop—Comment, Project No. P034519

Dear Mr. Clark:

The Center for Informed Food Choices (CIFC) is submitting the following comments on the “Food Marketing to Kids Workshop.” We are also separately submitting a request to participate. CIFC was formed in 2000 as a non-profit, 501(c)(3) organization whose mission is to advocate for eating more whole, plant-based foods, and to educate about the politics of food. CIFC publishes *Informed Eating*, a monthly email newsletter that monitors the food industry and tracks nutrition policy at both the federal and state levels.

As part of our ongoing policy tracking, we have been conducting a series of interviews with nutrition advocates around the country about their efforts to pass school-based legislation at the state level. Through these case studies, we have learned of the vast challenges advocates face in the form of food industry lobbying. Many of the following comments reflect on-the-ground experiences from these interviews. In addition, we have conducted numerous expert interviews and some of those excerpts are included as well.

We will comment generally on the concept of self-regulation as a strategy and specifically on topic numbers 3-6 as described in the Federal Register notice.

Industry self-regulation of food marketing to children is a 30-year experiment that has utterly failed. One only needs to turn on any children’s television show to see the plain evidence of this reality. In addition, the industry-wide self regulatory standards such as those promulgated by the Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus have been far out-paced by technological advances. Having a few well-meaning statements on a website about such ideas as not taking advantage of a child’s imagination is insufficient considering the onslaught of marketing messages that bombard children on a daily basis. (See generally, Susan Linn, *Consuming Kids*, The New Press, 2004.)

Existing Industry-Wide Self-Regulation Programs (topic # 3)

In examining industry-wide standards, CARU gets most of the attention. Their failure as a self-regulatory body has been well-documented. (See e.g., Angela J.

Campbell, *Self-Regulation and the Media*, 51 Fed. Comm. L.J. 711. May 1999; *Pestering Parents*, Center for Science in the Public Interest report, 2003.)

Grocery Manufacturers of America's Guidelines Violated by Members

Another set of industry-wide guidelines is those promulgated by the powerful trade association, the Grocery Manufacturers of America (GMA). According to its own website, GMA is the world's largest association of food, beverage and consumer product companies. (www.gmabrands.com) GMA's 140 members enjoy annual sales of more than \$500 billion in the U.S. alone, and consist of major food corporations such as Kraft, Nestle, Mars, PepsiCo, Kellogg, ConAgra, Campbell Soup, General Mills, Nestle, and the Coca-Cola Company.

Given that many of these companies have been attempting to position themselves as improving their marketing practices (see later discussion), it's interesting to note how many of the guidelines (that often mirror CARU's) are routinely violated by GMA members. According the guidelines set forth on its website, (<http://www.gmabrands.com/publicpolicy/gmaguide.cfm>), GMA members adhere to the following advertising principles (among others):

- 1) Advertisements should not mislead about potential benefits from the consumption of a product.
- 2) Food product advertisements should not undermine the role of parents and other appropriate adult role models in providing valuable dietary guidance.
- 3) While fantasy, including animation, is appropriate in communication with younger as well as older children, care should be taken not to exploit a child's imagination in a way that can encourage poor dietary habits.
- 4) Food and beverage advertisements should not encourage or condone excess consumption and portion sizes should be appropriate to the setting portrayed.
- 5) Food and beverage advertisements should not undermine the promotion of healthy, balanced diets.

VIOLATION EXAMPLE ONE

GMA member PepsiCo owns Quaker Oats, which makes Captain Crunch cereals. The following ad for Captain Crunch violates each of these five principals.

Captain Crunch cereal television commercial

Date and time: 2/21/05, 2:45 PM PST; Station: WB 20; "Sabrina" program

Scene

Two kids, one says "I wonder who our baby sitter is tonight," when the door mysteriously flies open to reveal (like a scene in a very scary movie) an old, fat lady with a huge mole; looks like a witch. She approaches the kids ominously,

finger wagging, grabbing girl's stuffed animal out of her hands and says in a very mean manner: "NO playing, NO jumping on couches, NO loud music."

(Violates # 2)

Boy says: "What if she says NO Captain Crunch?" Next, the Captain Crunch ship busts through the house, breaking through the wall, much to the kids' delight.

Captain says: "Hold on to your teeth, nanny – CRUNCHITIZE"

(Violates # 2)

The kids are animated into bits of cereal and are "beamed" on board the ship; now the whole scene is animated.

(Violates # 3, as does the entire animation.)

Captain says: "Welcome to MY house – party-house that is!" Kids are now jumping on couch; boy with cereal box, girl with bowl, with cereal flying everywhere, cut to DJ with loud music and lots of lights.

(Violates #s 1, 2, and 3)

SONG: "All I wanna do is jump and crunch, jump and crunch."

Captain: "Captain Crunch cereal is a cool part of this nutritious breakfast."

Shows (for a split second): pitcher of milk, muffin and glass of OJ. The bowl of cereal is bigger than the pitcher and about four times the size of the muffin.

(Violates #s 4 and 5)

The bottom-line message is that adults are mean and if you defy authority you will get the reward of a big happy party with fun food, violating the rule not to "undermine the role of appropriate adult role models" and exploiting imagination.

VIOLATION EXAMPLE TWO

GMA member General Mills makes Reece's Puffs cereals. The following ad for Reece's Puffs cereal violates each of these five principals.

Reece's Puffs cereal television commercial

Date and Time: 2/21/05; 3:00pm PST; WB channel during Pokemon cartoons

Scene

Two young teens, about age 14, are at the end of a very long line, apparently for concert tickets. (They are sitting in chairs, while everyone else is standing.) One kid is bummed out at how far back they are.

First kid says: "At least I had Reece's for breakfast" and gives box to second kid, who then decides to eat some. Next, the two kids are propelled by animation inside to the front of the concert hall, which is packed with a cool hip-hop band playing loud music: There are Reece's logos everywhere – it's like a big celebration of Reece's; the song's lyrics are just: "Reece's Go" repeated.

We hear second kid's voiceover: "It tastes like a Reece's Peanut Butter Cup, which brings us to this awesome place – the VIPeanut Butter and Chocolate Section."

(Violates #s 1 and 3)

Next voiceover: "Part of this good breakfast with 12 key vitamins and minerals", and shows glass of OJ, glass of milk, a muffin, and a huge bowl of cereal. Cut to second kid holding and eating from a huge glass bowl, about 4-5 cups. Next we see that the fantasy is over; hear voiceover: "Hey, it's Reece's for breakfast."

(Violates #s 4 and 5)

The bottom-line message is that when kids eat lots of candy cereal they get their ultimate fantasy – a really cool concert, violating the rule not to "exploit a child's imagination in a way that can encourage poor dietary habits."

These are just two of numerous similar examples of such violations.

No Oversight, Complaint Process, or Enforcement Mechanism

Part of the problem with GMA's self-defined criteria is the lack of any complaint process. Nowhere on their website is there a mechanism for consumers to complain. Nor is there any information about how companies monitor each other. So what is the point exactly of having these "guidelines" on their website if there is no accountability? GMA also claims to support CARU's guidelines, but if GMA's principals mirror those of CARU and don't add anything, why have them?

GMA Lobbying to Undermine Children's Health in Schools

Allowing companies to self-regulate implies a certain level of trust that GMA has clearly not earned; quite the contrary. At every opportunity, GMA puts its members' economic interests above children's health. There is no better evidence of this than GMA's heavy-handed lobbying related to school nutrition.

GMA is on record as opposing virtually every state bill across the nation that would restrict the sale of junk food or soda in schools. A search for the word "schools" on the GMA website resulted in no fewer than 126 hits, each another example of either submitted testimony or a letter filed in opposition to a school-related nutrition policy. Here are just a few examples of recent document titles:

- GMA Letter in Opposition of Texas Food and Beverage Restrictions (05/18/05)
- GMA Letter in Opposition to Oregon School Restrictions Bills (03/28/05)
- GMA Requests Veto of Kentucky School Restrictions Bill (03/11/05)
- GMA Letter in Opposition to California School Nutrition Bill (03/06/05)
- GMA Comments in Opposition to Oklahoma Food and Beverage Restriction Bill (02/05/05)

And GMA does not just send letters; they send experienced lobbyists to every state capital where their members' economic interests are threatened.

This lobbying campaign is quite effective. For example, in August 2004, the California legislature was on the verge of passing a crucial children's health bill that would have set reasonable standards on food sold in schools—similar to nutrition guidelines currently applied to federal meal programs. The policy was developed over two years by a committee of health experts. But thanks to last-minute lobbying by GMA, the bill failed by just five votes, despite having the support of 80 nonprofit education and health organizations. (The letter referenced above is GMA's opposition to the bill that is currently pending.)

Similar stories have been repeated across the country. Nutrition advocates concerned about rising rates of childhood obesity and diabetes are trying their best to get their state representatives to help them rid schools of sugary beverages and high-fat junk food. But at every step along the way, GMA, along with its member companies Coca-Cola and PepsiCo have beat them back, because they have more lobbying resources and money to offer politicians in the form of campaign contributions. The nation's largest trade association of food manufacturers has proven that it cannot be trusted to self-regulate. GMA and its members are clearly more interested in promoting their products in schools, no matter what the consequences to children's health.

Nickelodeon's Disingenuous Statements and Unaccountable Policy

At the Institute of Medicine's (IOM) Committee on Food Marketing and the Diets and Children and Youth workshop this past January, Marva Smalls, executive vice president of Nickelodeon, made several noteworthy comments. (Remarks available at <http://www.iom.edu/Object.File/Master/24/712/0.pdf>) For example, she said that "Most advertisers religiously adhere to the guidelines set by CARU. We would know: We're part of CARU and sit on the board." As noted above, this statement has been disputed by other commentators and is an exaggeration at best. Also, the fact that a major children's television channel is represented on the board of the very organization charged with monitoring its practices only furthers the point that CARU is the fox guarding the henhouse.

Ms. Smalls also claimed that Nickelodeon's own policy goes beyond that of CARU in the following ways: "Advertisers should not encourage or condone excessive consumption; portion size should be appropriate to the setting portrayed." And that: "Advertisers for food products should depict a balance -- either in terms of nutrition or behavior -- to communicate the role of the product in the framework of a healthy lifestyle." Then she said how the channel had implemented a policy to pull ads that did not meet these criteria, but did not have to, because food advertisers had voluntarily changed their ads. That all sounds quite impressive. But missing was any explanation of Nickelodeon's oversight to ensure that its advertisers actually continue to adhere to their rules (if indeed

they ever did). Do they have screeners who look for future violations? Do they have a complaint process set up for viewers? Where is the accountability?

Actions Speak Louder than Words: Nickelodeon Promotes Dairy Queen

Less than two months after Nickelodeon's statement to the IOM committee, the company announced a partnership with Dairy Queen to promote their "DQ Crew Club" on Nickelodeon's website. The DQ Crew Club is aimed at kids as young as age three and features 3D-web games and the chance to earn coins redeemable for online prizes. According to the press release: "To help kick off the DQ Crew Club, nick.com will sponsor the "Spring into Action" sweepstakes, where kids can enter to win a \$500 gift certificate toward outdoor fun items such as a 12-speed bike, a scooter, or rollerblades." (Dairy Queen Partners with Nickelodeon to Promote New Online Kids Site, QSR Magazine, 03/22/05; <http://www.qsrmagazine.com/shells/full.phtml?id=4458>)

Typical Dairy Queen products include: the Brownie Earthquake, the Chocolate Chip Cookie Dough Blizzard, sundaes, and banana splits. For meals, there's the Double Bacon Cheeseburger, fries, hot dogs, and one chicken salad. It's unclear how such a menu satisfies Nickelodeon's guideline that: "Advertisers for food products should depict a balance -- either in terms of nutrition or behavior -- to communicate the role of the product in the framework of a healthy lifestyle."

Individual Company Self-Regulatory Efforts and Best Marketing Practices (topic # 4)

Major food companies have recently been trying to demonstrate how much they care about children's health, saying they are eager to be "part of the solution." But the reality is far different. Quite simply, a corporation's legal obligation is to make as much money as possible for its shareholders, and all other concerns must be secondary. (See *Dodge v. Ford Motor Co.*, 204 Mich. 459, 504, Feb. 7, 1919.) A food company's job is to make money, not promote public health. The goals of a corporation and those of public health are diametrically opposed and cannot be reconciled. Even if one does not accept this premise, let's take a closer look at some of the ways that major food companies have been claiming to improve its practices when it comes to marketing to children.

Kraft's Self-Proclaimed Advertising Policy has No Accountability

In January, Kraft promised to scale back junk food ads to children, a move that earned the company much free positive media. But the potential impact of Kraft's promises isn't entirely clear. For example, only certain products, including regular Kool-Aid, Oreo cookies, several Post children's cereals, and some varieties of Lunchables will no longer be advertised to children under age 11. However, according to its press release, "products that the company will continue to

advertise in media aimed specifically at the 6-11 age group include: Sugar-Free Kool-Aid, Half the Sugar Fruity Pebbles cereal, and Chicken Dunks Lunchables Fun Pack. Kraft claims that these products offer “beneficial nutrients or a functional benefit” and, as part of its new “Sensible Solutions” program, a self-defined labeling program.

There are many problems with these sorts of statements. First of all, Kraft defines what is and isn’t healthy. Is sugar-free Kool-Aid (made with Splenda, a controversial artificial sweetener) healthy for kids just because Kraft says so? Companies simply cannot be objective in making these sorts of determinations.

Another problem with industry announcements of improved policy is that there is *no accountability*. Even if Kraft’s statement is a good thing, who is making sure they stick to it? And what if the changes course next week? They received tremendous free press and now they are free to do whatever they want because there is no accountability whatsoever.

Also in the Kraft press release is how the company “will continue to advertise its full portfolio of products in television, radio and print media seen principally by parents and all-family audiences. The company will also, in accordance with policies that it regularly evaluates and revises, market its products through means such as packaging, websites and in-store promotion.” (Kraft press release, 01/12/05; <http://www.kraft.com/newsroom/01122005.html>) In other words, Kraft will simply transfer its advertising to other media.

Kraft’s School Policy is Self-Serving and Unreliable

In this same press release, the company claimed the following: “Kraft and other food companies have a history of responsible self-regulation of their marketing practices to children. For example, in 2004, Kraft eliminated all in-school marketing and set specific nutrition criteria for products sold in school vending machines.” How exactly is Kraft accountable to this statement? Has anybody checked every school where Kraft products are sold to make sure that these nutrition criteria are actually being met?

In schools that participate in federal meals programs, specific nutrition criteria must be met and schools are monitored (albeit inadequately) and held accountable when their meals do not conform to government standards. However, for statements like this one by Kraft regarding the nutrition standards on its food sold in schools, no similar system of accountability is even possible.

Moreover, it is disingenuous to promise to stop “in-school marketing” but still actually *sell* products in school. Does the sale of food not count as marketing? If you asked most nutritionists, which is worse: the sale of unhealthy food products to kids or the advertising of them, the answer would be obvious.

Looking at the nutrition criteria that Kraft is employing illustrates why we cannot allow food companies to set such standards. According to its website, Kraft's guidelines for school vending are to only allow foods with "35% or less of total calories from sugars."
(http://164.109.46.215/responsibility/nhw_marketingpractices.aspx)

However, in a joint report by two agencies of the United Nations (the World Health Organization and the Food and Agriculture Organization) international nutrition experts recommend limiting sugar intake to less than 10 percent of calories. (Diet, Nutrition and the Prevention of Chronic Diseases, WHO Technical Report Series 916, 2003) Thus Kraft is setting nutrition guidelines that allow children to eat up to 3.5 times the amount of acceptable sugar allowance. Moreover, Kraft's guidelines exclude "naturally occurring sugars" so that means they allow foods to be sold in schools with up to 35% of *added* sugars.

Finally, the last of Kraft's school nutrition guidelines say they promote "Inclusion, where practical, of fiber, whole grains, fruits, dairy and vegetables." These are the very foods that the recently-revised Dietary Guidelines emphasize, and yet once again, Kraft gets to decide when they might get included. Of course, it's hardly practical to sell whole grains (like cooked brown rice or whole grain bread) or fresh fruits and vegetables through school vending machines. And that's the point: Companies cannot manufacture truly healthy foods; that's nature's job.

Advertising Lobbying Group Formed: Is this Responsible Self-Regulation?

Less than two weeks after its announcement of improved marketing practices, Kraft turned right around to join with other major food companies and ad agencies to create a new lobbying group, the Alliance for American Advertising. Together, Kraft and fellow members General Mills and Kellogg comprise the top three advertisers of packaged food to kids with combined annual spending on kids' ads of close to \$380 million in the U.S. alone.

Dietician and nutrition consultant Fern Gale Estrow says that Kraft is "playing both sides of the fence." She also says the company's advertising policy is "a bit of a game because the reality is that while they say they aren't advertising to kids under age 12, every time there is an ad for adults on TV and the child is sitting there, the kid gets marketed to." (Interview conducted, 03/07/05)

Other alliance founders include the American Association of Advertising Agencies and the Grocery Manufacturers of America, two powerful trade associations in their own right. The alliance's stated purpose is to defend the industry's First Amendment rights to advertise to children and to promote self-regulation as an alternative to government restrictions.

Susan Linn, author of *Consuming Kids* and instructor in psychiatry at Harvard Medical School is appalled at this industry power grab. "Marketing to children is

not an absolute right. Food companies and the advertising industry should be thinking about their responsibilities to children, not about their 'right' to exploit them. Whether we rely on research or common sense, we know that children are more vulnerable to marketing than adults and that they should be protected because of their vulnerabilities," she said. (Interview conducted, 03/19/05.)

Coca-Cola's Hypocritical Marketing Policy

The Coca-Cola Company claims to not market its products to children under age 12 and yet they violate this policy in numerous ways. For example with:

- Coke-branded toys: including checker sets and cars aimed at children as young as age four;
- Television product placement: such as on American Idol, the top-rated show for children ages 2-11;
- Promotional tie-ins: for example, as a sponsor of the Harry Potter movies and other popular children's media.

Most importantly, Coca-Cola's aggressively markets its products in schools to children of all ages, through exclusive "pouring rights" contracts. The company often points to its model guidelines for such school "partnerships," which recommend that soda not be sold in elementary school, but middle and high schools are ok. ("Model Guidelines for School Beverage Partnerships;" http://www2.coca-cola.com/ourcompany/hal_school_beverage_guidelines.pdf)

However, this document has no enforcement mechanism. School contracts are made at the local level with regional bottlers who are not accountable to Coca-Cola headquarters, where the guidelines originate. Moreover, the document permits the marketing of sugar-laden "sports drinks" to younger children, as well as the use of the Coca-Cola logo on school materials, such as those promoting health and nutrition education. (See also, Rhea R. Borja, Coca-Cola Plays Both Sides of School Marketing Game, *Education Week*, 11/05/03)

Coca-Cola Lobbying Undermines School Nutrition Policy

In addition to its marketing policy being untrustworthy, Coca-Cola has undermined school nutrition policy right along with GMA, with its own brand of heavy-handed lobbying tactics. Here are just a few examples of states where bills were compromised or completely killed as a result of their actions:

Kentucky: In March 2005, the Kentucky state legislature finally passed a compromise bill that gets rid of soda in elementary schools. Veteran dietician Carolyn Dennis, chair of the Kentucky Action for Healthy Kids Taskforce, has battled Coca-Cola lobbyists for four years. Allowing soft drink companies to continue to sell soda in middle and high schools was the only way the bill could possibly pass. The bill's original language called for "healthy beverages" to

replace soda, but Coca-Cola balked, worried about the implications for its flagship product's reputation. Dennis explains: "The Coke lobbyist wanted the language, 'school-day appropriate beverages.' We debated it for hours, and finally my colleagues said 'Look, if this will get them off our backs, let's do it.' So we compromised on 'school-day approved.'" (Interview conducted 03/13/05)

Washington: In 2004, the state of Washington tried to pass legislation that would have banned selling junk food and soda in schools. But, according to Seattle School Board member Brita Butler-Wall, 17 revisions later, the bill was watered down significantly: "It's pretty weak. It just requires that by the fall of 2005, all schools have some sort of policy around junk food and soda." She suspects Coke had an influence on the outcome: "All I know is, just a few days after we sat down with our state senator to talk about it, Coca-Cola sent two representatives to meet with her. That certainly didn't help matters," she said. (Interview conducted 08/23/04)

Indiana: At the Summit on Obesity hosted by Time magazine and ABC News in June 2004, Charles Brown, state representative from Indiana and chairman of that state's Public Health Committee asked then-U.S. Secretary of Health and Human Services Tommy Thompson why, if Coca-Cola was so responsible (as Thompson had just been claiming), had the company sent a team of five lobbyists (including a regional vice president) to defeat his bill that would have reduced soda sales in schools by a mere 50 percent? (Attended event)

Additional Examples of Industry Undermining School Nutrition

In addition to the specific lobbying tactics of the GMA and Coca-Cola, other companies such as PepsiCo and trade associations such as regional soft drink associations have been lobbying hard against improved school nutrition policies. Below are just a few examples that illustrate how industry cannot be trusted.

Connecticut: A bill that would have allowed only water, juice, and milk to be sold during the school day, K-12 has been heavily lobbied against by the soft drink industry in recent weeks. As a result, a compromise was reached that allows diet soda and sports drinks to be sold in high schools after the lunch period. At one stage of the extremely contentious battle, lawmakers debated for eight hours while junk food lobbyists swarmed the state capital in hopes of killing the bill altogether. Under-handed tactics included how Coca-Cola lobbyists shared data regarding school income from soda sales with lawmakers behind closed doors, so advocates couldn't refute the information. (*The New York Times*, Vending Machines: Sweet Deal or Just Too Many Sweets? 05/29/05)

This is actually the third try to get a bill passed in Connecticut. Last year, advocates attempted to set nutrition guidelines on food and beverages, but ended up with a gutted law. According to Lucy Nolan, executive director of End Hunger Connecticut, "Pepsi just worked that bill to death. We thought we had

really good votes on it, but then we just watched the count go down. I was surprised at how hard the soda companies really went after it,” she said. (Interview conducted 08/24/04)

Oregon: In Oregon, what was a relatively strong piece of legislation was completely gutted thanks to soda industry lobbying. The bill would have banned carbonated soft drinks, candy, and fried pastry products while setting strict nutritional and calorie requirements for other snack items sold in schools. But the bill that passed called only for schools to have “wellness policies.” An Oregon newspaper editorial squarely places the blame with politicians bowing to corporate pressure: “Sen. Vicki Walker's reconstituted bill resembles the position favored by the Oregon Soft Drink Association, which, coincidentally, has made hefty campaign contributions to Walker and to two other members of the Senate Education Committee: Sen. Ryan Deckert, D-Beaverton, and Sen. Jeff Kruse, R-Roseburg. The three lawmakers each received \$2,000 of the \$91,000 the soft drink lobby poured into legislators' coffers last fall.” (Register-Guard, Junk food jitterbug: Vicki Walker dances away from tougher rules, 05/16/05)

Arizona: In April 2005, Arizona passed a law that bans the sale of soft drinks and candy during the school day, but only K-8. High schools were exempted as a compromise measure, due to heavy industry lobbying. The provision that would have extended the ban to high schools was added and removed from the bill several times, but ultimately, the junk food lobby won. (The Arizona Republic, Napolitano signs ban on sales of junk food, 04/27/05)

New Mexico: In Albuquerque, New Mexico, PepsiCo has an exclusive contract with the district consisting of 125 schools. In 2004, when schools tried to stock other vending machines with milk, PepsiCo sent a letter warning that they were in violation of the contract. Jennie McCary, a registered dietician with Albuquerque Public Schools explains: “We scrambled to get a hold of the contract and learned that Pepsi had exclusive rights to vend all beverages throughout the district. I was shocked to learn that the beverage companies have more rights than the schools. I find it unbelievable that the principals, who were trying to improve the beverage options, were treated this way. It was very frustrating,” she said. The school advisory council plans to fight the renewal of the contract but that’s not until 2007. (Interview conducted 08/11/04)

California: In 2003, the California legislature passed a bill to ban the sale of soda in elementary and middle schools, but a compromise was reached to exempt high schools. Not coincidentally, most sodas in schools are sold at the high school level. The bill’s author, California state Senator Deborah Ortiz, says she was very disappointed with the compromise, but “the food and beverage industries are extremely powerful.” (Interview conducted 08/30/04)

How can we possibly trust companies to self-regulate when they make promises in public that sound good, but behind the scenes they act in their own self interests, to the complete detriment of children's health?

Education (topic # 5)

Nutrition Curriculum: Food and Beverages Companies Not a Trusted Source

When it comes to educating our children about good nutrition the last people we should rely on are the very companies who are marketing unhealthy products. We should not be fooled by companies who are so eager to provide schools with education curriculum and even send their own representatives into schools.

The Coca-Cola Company announced in May yet another educational program targeted to the nation's middle schools. The company says its new initiative—called “Live It!”—will help students build healthy lifestyles by encouraging physical activity and providing nutrition information in schools. “Live It!” comes on the heels of Coke's “Step With It!” curriculum, which has already reached more than one million kids. The new program is currently being “tested in key markets” and will be available to 6th graders in middle schools across the U.S. in the fall of 2005. How we possibly trust a company that makes money selling high-sugar, nutritionally deficient beverages to teach children about good nutrition? Moreover, given the company's vested interest in continuing to sell its unhealthy products in schools (evidenced by their heavy lobbying described above), they have an obvious conflict of interest when it comes to their presence in schools.

Promoting Exercise Deflects Attention from Unhealthy Food

Another problem with entrusting food companies to educate our children is how their curricula invariably emphasize exercise. For example, McDonald's is attempting to deflect attention from its unhealthy products by promoting physical activity as the “real” answer to the obesity problem. In January, McDonald's announced that it was sending its mascot, Ronald McDonald, into elementary schools to promote fitness among children. Dubbed the company's new “chief happiness officer,” Ronald has become an “ambassador for an active, balanced lifestyle,” McDonald's Chief Creative Officer Marlina Peleo-Lazar told a government panel studying food advertising. Nutritionist Melinda Hemmelgarn, a Food and Society Policy Fellow with the Thomas Jefferson Agricultural Institute, is unimpressed. “Their goal in going into schools is, in a word, branding. If Ronald was truly an ambassador of health, he would promote organic, sustainably-produced foods,” she said. (Interview conducted on 03/14/05)

Author Susan Linn agrees that McDonald's has no place in school. “This is just another marketing ploy. The notion that children need Ronald McDonald to get

them to enjoy exercise is bogus. Given the opportunity, kids naturally like to be active," she said. (Interview conducted on 03/19/05)

Another company seeking to teach children about exercise is PepsiCo, the world's fifth-largest food and beverage company, with 15 brands – each generating more than \$1 billion in annual retail sales. Last fall, PepsiCo reached 3 million students by sending educational materials on fitness to elementary schools. In March, the company targeted all 15,000 middle schools in the country with its get-fit message. Ironically PepsiCo already has a strong marketing presence in public schools. Exclusive contracting with school districts allows the company to sell highly sweetened beverages and Frito-Lay-branded junk food.

Also, PepsiCo has created a Web site (www.healthispower.net) devoted to showing how much it cares about children's health. Yet the site claims that "kid-friendly" school snacks such as Doritos and Pepsi are "part of a balanced diet." "If companies like McDonald's and Pepsi really cared about children's health they would stop hawking their wares in schools," says Linn. (Same interview)

Special Labeling Programs Do Not Educate; they Greenwash Junk Food

The Federal Register notice referred to PepsiCo's new "Smart Spot" symbol as means of "education," when it's really no more than a clever marketing ploy. The Smart Spot is a small green circle with the message, "Smart Choices Made Easy" that appears on such "healthy products" as Diet Pepsi, Gatorade, and Baked Lays. But labeling a food healthy does not make it so. Nutritionist Hemmelgarn thinks the labels can be misleading and are an end-run around FDA health claim labels. "Gatorade is simply sugar and water; it's not a healthy product," she said. Gatorade is heavily marketed in schools as a healthy alternative to soda, despite water being a perfectly adequate thirst quencher.

Another company jumping on the "good for you" bandwagon is General Mills, a leader in children's cereals with annual sales of more than \$1 billion. In January, General Mills reformulated its cereals sold in the U.S. to contain whole grains and the boxes are now plastered with a huge "Whole Grain" banner. In April, with the release of the food pyramid, General Mills placed the new image on its cereal boxes as well. But this is not education; it's marketing. And what about all those high-sugar cereals aimed at kids? Mary Beth Chorsgaard, General Mills spokesperson says, "Even with pre-sweetened cereals, there really is no better breakfast your child could eat in the morning." (Interview conducted 03/16/05.)

Marion Nestle, Paulette Goddard Professor of Nutrition, Food Studies, and Public Health at New York University and author of *Food Politics*, responds: "It's hard not to react sarcastically to such statements from cereal makers. I have heard them say the reason sugary cereals are good for kids is because of the milk that's added. That, I suppose, would also be the rationale for giving kids cookies for breakfast. This is a marketing ploy to make people think that whole grain

Cocoa Puffs are healthy. Sugar is still the first ingredient,” she says. (Interview conducted 03/14/05.)

Dietician and nutrition consultant Fern Gale Estrow is also skeptical about the General Mills move. She is concerned that parents might be duped by the new labels. “The level of confusion in nutrition is already massive. Now we have whole grain Lucky Charms. I think it’s totally bogus. The dietary guidelines were changed to make a stronger statement about fiber, and this product has less than one gram of fiber per serving; that’s just not sufficient,” she says. (Interview conducted 03/07/05.)

Kraft’s new “Sensible Solutions” labeling program (also referenced in the Federal Register Notice) is just another clever marketing scheme, as explained above.

Nutrition experts agree that these health claims boil down to nothing more than marketing gimmicks. Melinda Hemmelgarn says the goal is not to actually promote health, but rather simply “to increase sales by health-conscious parents.” Marion Nestle is more blunt: “Food companies are desperate for sales and growth and if they can use ‘health’ to sell junk food, they will,” she said.

Proposals for New Initiatives (topic #6)

Given the overwhelming evidence that the food and beverage industries cannot be trusted to self-regulate, CIFIC does not endorse any policy proposal that would allow them to do so. We have tried that approach and it has failed, miserably. Instead, the government must act to protect the public’s health and especially that of vulnerable young children.

CIFIC does not believe that the first amendment presents an impenetrable barrier to the regulation of junk food advertising and marketing. Toward this end, we are coordinating a legal symposium on “Food Marketing to Children and the Law,” which will consist of both a law review publication and a live discussion. A panel of legal experts will convene on October 21 at Loyola Law School in Los Angeles, in part to discuss how the government can regulate food marketing to children without running afoul of the first amendment. We expect the legal scholarship resulting from this project to contribute significantly to the discourse.

Thank you for the opportunity to present these comments and for your interest in this important issue. We look forward to ongoing participation in the dialogue.

Sincerely,

Michele Simon, JD, MPH
Director, Center for Informed Food Choices