

HED: Food Fantasies

DEK: CSPI's dream for kids is spinach; for lawyers, it's cream

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Imagine Willy Wonka attracting kids with golden tickets to his vegetable farm with the prize being a lifetime supply of carrots. Or first years aboard the Hogwarts Express buying broccoli to get famous witches and wizards cards. Or young children playing the game of Spinichland.

Hard to do that? Well, it's the dream of Michael Jacobson and Margo G. Wootan of the Center for Science in the Public Interest. Last week, they issued their proposed "voluntary" guidelines for marketing to kids -- voluntary in the sense that they don't see lawmakers or regulators taking up the issue very soon, but do hope trial lawyers will become involved quickly.

The guidelines call for limiting marketing aimed at children to foods deemed to be part of a healthy diet by the Agriculture Department. While it wouldn't leave the only ads for kids to be just for spinach, brown bread and water, it would essentially knock out most marketing for candy, sugar sweetened cereal, ice cream, hamburgers, chicken tenders, french fries, pizza and soft drinks for the younger set. Toys of favorite cartoon or movie characters at fast food restaurants would be Verboten, as would promotions involving such characters with brand names.

The purpose of all this? To combat obesity, of course, which CSPI says has tripled among children in recent decades.

Unhealthy food choices are the primary driver of obesity, Wootan argued at the press conference introducing CSPI's guidelines, choices influenced by marketing to kids. As proof of influence, Wootan cited statistics indicating that kids see 58 commercials a day now. Quoting James McNeal of McNeal & Kids Youth Marketing, she said advertising aimed at children had doubled in the last decade -- from \$7 billion to \$14 billion. And, according to Jacobson, "It's all junk."

"Of course, you can have a junk food now and then. That's not the problem," Jacobson responded to a reporter's question about why not simply emphasize moderation. "The problem we're addressing is that practically everything marketed to kids is junk."

Expressing a mother's lament, Wootan opined, "If only I could get Shrek to come to my house to encourage my daughter to eat her vegetables, I'm sure I'd be much more effective." Fat chance. I don't recall any children in my youth being influenced to ask for spinach after watching Popeye.

But what of this notion that marketing to children is the driver of unhealthy food choices and thus a source of obesity? Is there evidence to support it?

In the same period that the dollar volume of marketing aimed at kids supposedly doubled and was influencing their choices, per capita candy sales in the United States declined. They reached a height of 27 pounds per person in 1997 and were down to 24.6 pounds in 2003, according to the [Census Bureau](#). For all the talk about soft drinks and their effects, consumption of them per person has declined in recent years as well, and what growth there is in that market is in diet drinks and water sales.

And data from overseas help round out the picture. [Sweden](#) has had a ban on ads to kids under 12 since 1991, yet 18 percent of youngsters there are overweight compared with 15 percent here. Other European countries likewise have put limits on ads with no effect.

But there is at least one good reason not to put severe restrictions on advertising. It's called the First Amendment, and it applies to advertising as well as political speech. As the Supreme Court ruled in its [Central Hudson](#) decision, any restriction by government on commercial speech would

have to demonstrate that the restriction served a legitimate government purpose, would directly advance that interest, was narrowly tailored to the task and was the least speech-restrictive course available.

CSPI's guidelines if implemented by government would likely fail all those tests. But where it knows it can't get government regulation, CSPI still appears to hope to get such regulation through litigation.

After the press conference last week, Jacobson told *The Washington Post* that CSPI has hired a director of litigation to develop lawsuits against the food industry. By issuing the guidelines, CSPI gives the food industry and advertisers the equivalent of a kind of legal notice so it can then claim they were forewarned before it begins forum shopping and filing lawsuits.

Its litigation bent may explain why CSPI's concern about obesity is slanted toward food as the driver of obesity rather than the startlingly lack of exercise young people are getting.

Wootan, in a response to a question about a lack of exercise rather than food marketing being a key source of the problem, pooh-poohed that notion, saying that suburbs have been around since the 1970s and the automobile culture for decades, while the startling rise in obesity has occurred over the last 15 years.

The problem with that, though, is the data. The CDC reported a [marked decline](#) in daily physical education in schools in the 1990s. There is anecdotal evidence of cutbacks in recess over the last 15 years as well.

The CDC also has noted the importance of physical activity in terms of many health problems, including heart attack, stroke and diabetes. Exercise has a direct relation to weight as a physically active person requires 20 percent to 30 percent more calories than a sedentary one.

But if exercise is the key driver rather than food and food marketing, whom do you sue? School districts for cutting back on PE? That's a no win proposition. Where there's no financial gain, there's no blame in CSPI's eyes.

So, in its leaders' world of imagination, Willy Wonka is a vegetable farmer, chocolate frogs turn into broccoli and there's no Candyland. For kids that may be spinach, but for lawyers, it could churn into ice cream.