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Office of the Secretary
Federal Trade Commission
Room H – 135 (Annex H)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Food Industry Marketing to Children Report: Paperwork Comment;
FTC File No. P064504

Dear Sir or Madam:

Enclosed is the Grocery Manufacturers Association/Food Products Association's ("GMA/FPA") comment in response to the Federal Trade Commission's request for comment on the topic of Food Industry Marketing to Children and Adolescents. We appreciate the work the Commission is doing to understand the complexities of this issue and look forward to working jointly to address any concerns.

Sincerely yours,

William C. MacLeod

Enclosures

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Comments of the Grocery Manufacturers Association/Food Products Association

Federal Trade Commission Request for Information and Comment

on

Food Industry Marketing to Children Report: Paperwork Comment; FTC File No. P064504

Introduction

The Grocery Manufacturers Association (“GMA”) is the world’s largest association of food, beverage, and consumer product companies. With annual sales of more than \$680 billion, GMA members employ more than 2.5 million workers in all 50 states. The organization applies legal, scientific, and political expertise from its member companies to vital food, nutrition, and public policy issues affecting the industry. GMA is led by a Board of member company chief executives. GMA speaks for food and consumer product manufacturers at the state, federal, and international levels on legislative and regulatory issues.

The Food Products Association (“FPA”) is the largest trade association serving the food and beverage industry in the United States and worldwide. FPA’s laboratory centers, scientists and professional staff provide technical and regulatory assistance to member companies and represent the food industry on scientific and public policy issues involving food safety, food security, nutrition, consumer affairs and international trade.

GMA/FPA is pleased to provide these comments for the record in response to the Federal Trade Commission’s (“FTC” or “Commission”) Request for Information and Comment (“Request”) (71 Fed. Reg. 62109) in connection with the Conference Report of Public Law 109-108 (Food Industry Marketing to Children Report to Congress – Comment, Project No. P064504).

In its Report, the Conference Committee directed the Commission to submit a report on marketing activities and expenditures of the food industry targeted toward children and adolescents and requested that the Commission include in its report “an analysis of commercial advertising time on television, radio and print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games” (71 Fed. Reg. 62109 n.2).

This is the Commission’s second request for comments on the planned report. In the first, the Commission explored potential sources of data and means of collecting information. GMA’s comments identified sources of data, provided an analysis of advertising in measured media, and offered to help the Commission gather additional information. In the current request, the Commission has solicited comments on the costs and benefits of compelling fifty companies to provide data on certain categories of foods for inclusion in the report. Specifically, the Commission proposes collecting data on “quick-service restaurant items, breakfast cereals, snack foods, candy and gum, carbonated and noncarbonated beverages, frozen and chilled desserts, prepared meals, and dairy products, including milk and yogurt” (71 Fed. Reg. 62110).

Specifically, the Commission requests comments on four issues:

- 1) whether the proposed collections are necessary for the proper functions of the FTC, including whether the information will have practical utility;
- 2) the accuracy of the Commission's estimate of the burden of the proposed collection;
- 3) ways to enhance the quality, utility and clarity of the information; and
- 4) ways to minimize the burden on those collecting the information.¹

The following sections of this comment address each issue in turn. GMA/FPA concludes it is possible that the collection of the requested information could aid the Commission in the discharge of its responsibilities. GMA/FPA believes, however, that the Commission has underestimated the burden of collecting the available information – potentially by a substantial amount, in both effort and expense. Therefore this comment suggests ways to reduce the burden on the companies and the Commission. Collecting and collating the reasonably available information efficiently can be done without sacrificing (and possibly even enhancing) the quality and utility of the information collected.

1) Are the proposed collections of data necessary?

One of the original purposes for which the FTC was chartered was to serve as an agency of expertise on the performance of marketplace in the United States (15 U.S.C. § 43). To build and maintain that expertise, the Commission was given authority to conduct studies. This the Commission has done, in areas as diverse as “Consumer Protection in the Tech-ade,” (Nov. 6-8, 2006, *see* 71 Fed. Reg. 72725) Intellectual Property and Antitrust, (*Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues*, Dec. 15-16, 2004, *see* 69 Fed. Reg. 61842) and indeed the 2005 Workshop: *Perspectives on Marketing, Self-Regulation, & Childhood Obesity* (July 14-15, 2006, *see* 70 Fed. Reg. 25060).

Thanks to the Obesity Workshop, the Commission has already gained a better understanding of the markets that the proposed data collection would cover. For example, the Commission and the Department of Health and Human Services (“HHS”) issued a Report that discussed a wealth of information that was collected and analyzed.² Public health experts who appeared at the workshop pointed to numerous trends in our society that could be contributing to increasing childhood obesity. Food and beverage advertising, however, was not one of them. One of the conclusions of the Report was that over the last thirty years there has been a substantial decrease in food advertising to children on television. (Report at 9.) Further, the Report explained that as

¹ 71 Fed. Reg. 62109.

² “*Perspectives on Marketing, Self-Regulation, & Childhood Obesity*, A Report on a Joint Workshop of Federal Trade Commission and the Department of Health and Human Services,” April 2006.

a percentage of total advertising to children, food advertising has seen decreases every decade since the 1970s. (Report at 9 n.66.)

GMA was pleased to be able to submit a comment that included a wealth of information about advertising to children. The data in GMA's comment confirmed that the last ten years were no exception to 30-year decline in TV advertising for food and beverage advertising seen by kids. In addition, GMA reported that food and beverage websites viewed by children on the internet remained so miniscule compared to TV advertising that they had no discernable effect on the downward trend. Thus, the FTC workshop produced information that dispelled the popular misconception that advertising of foods and beverages to children has increased as childhood obesity has risen.

In light of the knowledge that we have already gained from the information collected at the Obesity Workshop, we believe, as set forth in more detail below, that the need and utility of additional data is limited particularly when weighed against the significant costs of obtaining and compiling it. While more information on any subject is often desirable, we believe the Commission should be judicious in comparing its value to the cost of collecting it. Without carefully circumscribed requests for information, the costs could far exceed the benefits.

2) Are the Commission's estimates of the burden of the proposed collection accurate?

GMA believes the Commission has underestimated the expense and disproportionate burden of collecting the information designated. While a few companies track some activities related to products in the categories described by the Commission in the ordinary course of their business, the odds are high that no company collects or classifies the information in the format that the Commission would seek. In fact, some companies may not track any of the data the Commission has requested because of the time and expense devoted to such marketing. Others may conduct some related activities but not refer to it as marketing or budget for it across brands or possibly across departments. The actual labor involved in determining the marketing activities each company and each brand within in each company engages in, combined with collecting the data itself will likely require substantially more hours and costs than the Commission predicts. Additionally, the cost of drafting a report of the quality and reliability that the Commission would expect would likely be much higher than the Commission estimates.

For grocery manufacturers, the Commission has identified six broad categories of goods: breakfast cereals, snack foods, candy and gum, carbonated and noncarbonated beverages, frozen and chilled desserts, and dairy products. The Commission has estimated that the average company operating in a single segment would require 80 to 120 hours and the average company operating in multiple segments would require 120 to 300 hours to gather the contemplated information.

These categories comprise dozens of different segments with thousands of products. One leading media research company tracks about one hundred segments on a regular basis in these categories:

- thirty categories of prepared meals,
- fourteen categories of dairy products (not including frozen and chilled deserts),
- thirteen categories of ice cream, frozen novelties and sherbet,
- four categories of cereals,
- nine categories of candy and gum,
- eleven categories of appetizers, snacks and nuts,
- twelve categories of carbonated and noncarbonated soft drinks,
- ten categories of fruit drinks and juices.

Within the categories are thousands of products, the marketing and sales of which are typically organized on a brand-by-brand, and often product subline-by-subline, basis. If companies were required to canvas marketing and sales managers and create new financial reports to obtain the requested information, GMA/FPA believes the aggregate costs could be orders of magnitude above the level the Commission estimates. Every company likely to be surveyed will have an internal tracking system different from every other. In order to report activity in a way that was not measured in the ordinary course of the business, companies would have to work around their established systems and construct new ones with transactional data that may be difficult or impossible to retrieve and collate. If such an effort were possible at all, it would require thousands of hours and cost millions of dollars in companies of the size the Commission would likely survey.

GMA/FPA does not believe that the distinction between single-category companies and multiple-category companies would cause the burdens of the data collection to vary as much as the Commission estimates they would. Many companies operating in single categories have as many different brands and repositories of data as their multi-category counterparts. The costs are likely to correlate more closely to number of brands and products offered than to segments in which companies operate. Most companies surveyed would likely have at least several sources of data to collect, and many could have dozens. Accordingly, GMA/FPA thinks that the upper end of the range the Commission estimated for data collection – 300 hours – is likely to be the lower bound of the range of the average for all 50 companies, under the best of circumstances. At a cost of \$250 per hour, the aggregate cost of the data collection would be \$3.75 million ($\$250 \times 300 \times 50$). The upper bound of the range could be multiples of several times that number.

As an analysis of the sensitivity of the Commission's cost estimate, GMA/FPA considered what might be a minimal burden per category of one hundred categories (roughly the number that one leading media research firm tracks within the groups the Commission has identified). If an average of five companies participate in each category, then categories could call for a minimum

of five hundred collection and organization efforts. If the cost to each company for each category were the \$100,000 that the commission estimates for a single-category company, the burden on the fifty companies combined would approach \$50 million. GMA/FPA believes the costs would exceed \$100,000 per category if companies were required to reexamine transactional data and create systems to organize them in a manner that departs from current financial reporting.

Although the Commission noted that preparation of a response would likely involve financial and legal experts, the agency did not break out the hours devoted to preparing the response. Providing data to the Commission is a costly exercise. GMA/FPA estimates that the professional assistance alone would cost the companies at least \$25,000 (for the smaller ones) to more than \$50,000 (for the largest companies). If the average expense for drafting and producing the report were \$50,000, the aggregate cost for fifty companies would be \$2.5 million.

In short, the aggregate expenses of complying with data requests for the categories of goods the Commission has identified are difficult to estimate, because the scope of the project has not been specified and none of the relevant companies probably have systems in place to collect, sort, or report the data according to the specifications that the Commission has indicated it might use. If the companies have to create systems in order to conduct custom queries of internal records in a manner that is not keeping with regular business practices the costs could easily exceed by substantial margins the upper ranges of the estimates given here. If, on the other hand, the request is limited to measured media so that companies could respond to the requests by providing data that is tracked by an independent reporting service that collects and provides such data publicly, then the costs may come in closer to the Commission's estimates. Under such ideal circumstances, a more reasonable estimate of minimum burden would be in the range of \$5 million to \$10 million.

3) How can the Commission enhance the quality, utility, and clarity of the information?

Generally, GMA/FPA believes the Commission will find that when marketing activities reach economically meaningful and measurable levels, reporting services evolve to publicly report on them. If the activity occurs at de minimis levels, or not at all, firms will not offer it and sources will not measure it, because demand would be inadequate for services or information associated with it. Locating and measuring small expenditures and isolated activities becomes more costly and difficult when the activity is scarce and the type of tracking/categorization implicit in the FTC's request is not undertaken in the ordinary course of business for internal or external purposes.

a) Measured Media (television, radio, internet, and print media).

By and large, GMA/FPA believes that the vast majority of expenditures on food and beverage marketing activities primarily intended to appeal to children and adolescents takes place in the measured media. More specifically, television continues to garner the largest share of dollars from advertising budgets.³ While non-traditional unmeasured media has grown in usage and reach in recent years, the traditional measured media continues to serve as the primary allocation from almost all advertising budgets for major advertisers, regardless of their products or desired demographic audiences.

With respect to measured media, manufacturers and advertisers might be able to obtain most of the data that the Commission is considering as part of its requests. However, the ability to report and the quality of the data will depend critically on the specification of each request. GMA/FPA suggests that the most reliable and efficient means to gather useful ratings and expenditure data regarding advertising in the measured media will be to specify categories and terminology that manufacturers and advertisers can clearly understand and in fact use in the ordinary course of business. Only if requests are made in a format compatible with the ways in which traditional media are currently measured is meaningful data capable of aggregation likely to be reported.

As noted above, businesses report numerous categories of marketing data already. For example, Product Category Codes from Nielsen Media Research (“NMR”)⁴ identify around one hundred food categories⁵ and NMR classifies television programming into recognizable demographic groups and time frames. If the Commission were to tailor requests for information to the categories that already exist, the majority of manufacturers and advertisers would likely be able to respond with data that will assist the Commission. Reporting services segregate data according to media categories as well as product categories. NMR, for example, lists seventeen types of media in which it measures marketing activities including TV, radio, magazines, newspapers, outdoor, and internet. Other firms such as Information

³ See e.g. *Television Advertising and Internet Viewing of Food and Restaurant Messages*, a study conducted by Collier Shannon Scott, PLLC and Georgetown Economic Services, LLC on behalf of the GMA and the Association of National Advertisers in *Comments of the Grocery Manufacturers Association concerning the Federal Trade Commission and Department of Health and Human Services Public Workshop on Marketing, Self-Regulation & Childhood Obesity*, Appendix G (July 2005). Even those critical of food advertising recognize that the majority of “media messaging about food to children” is to be found on television. See M. Story & S. French, *Food Advertising and Marketing Directed at Children and Adolescents in the US*, *Int’l J. of Behavioral Nutrition and Physical Activity*, 3 (Feb. 2004) (claiming that 75% of advertising budgets are devoted to television).

⁴ By citing this third-party firm and other similar sources, GMA/FPA A is not expressing any opinion on the accuracy or quality of the information they contain, nor does the omission of any source imply that it is not worthy of mention.

⁵ Although NMR’s codes and product descriptions are proprietary, GMA/FPA is confident that reports using these codes or a similar company’s product codes would provide a level of detail regarding food advertising in measured media that would satisfy the Commission’s needs.

Resources, Inc. and Arbitron also track and analyze media viewing habits and spend data in a manner that allows advertisers to measure the amounts of their advertising by demographics and by product category.

In connection with the Commission's 2005 Public Workshop on *Perspectives on Marketing, Self-Regulation & Childhood Obesity*, GMA commissioned Georgetown Economic Services and Collier Shannon Scott to conduct an analysis of historical advertising trends.⁶ The study relied on data from NMR. GMA/FPA is willing to commission a similar analysis at the Commission's request in connection with this latest information request or continue to offer its services to assist in the gathering of data in a relatively uniform format from GMA/FPA's member companies.

b) In-store marketing and preferential shelf placement.

Virtually all in-store marketing remains focused on "gatekeeper" adults, not on children. In other words, activities such as end-of-aisle displays or coupons are meant to appeal to the shopper or decision maker and not to a child or adolescent who may be accompanying a parent or guardian. These activities and promotions exist for the purpose of encouraging price competition at the retail level, not targeting children or adolescents, and there is little chance that such spend could be measured or disaggregated in any reliable or useful way. Because such expenditures are not geared primarily towards reaching children or adolescents, collecting data reflecting that categorization is a relatively inefficient way to promote to children and adolescents. Indeed, GMA/FPA suspects that collecting data reflecting any such activity directed to children and adolescents would be potentially costly, difficult to aggregate, and would likely show so little economic activity that it would not measurably affect any observed trend in the measured media.

c) Events (out-of-store marketing).

Marketing activities primarily intended to appeal to children and adolescents that take place outside the retail environment, similarly present a difficult task in attempting to measure the expenditures. Whether the event is one sponsored by an advertiser or manufacturer, or is a county fair, or is a professional sporting event, attempting to first isolate and then measure targeted marketing expenditures will be a difficult task at best. Such events rarely are attended by children alone, and seldom by enough adolescents to be characterized as primarily directed to them. These events are generally "family" activities that attract audiences from ages 8 to 80. A range of attendees this wide makes measuring or even estimating activity on a particular audience segment nearly impossible. Like in-store

⁶ *Comments of the Grocery Manufacturers Association concerning the Federal Trade Commission and Department of Health and Human Services Public Workshop on Marketing, Self-Regulation & Childhood Obesity*, Appendix G (July 2005) (That analysis found that expenditures and impressions had dropped significantly over the last decade.).

marketing, marketing primarily intended to appeal to children and adolescents at events out of the store would probably not add any measurable amount to already-measured media.

d) Promotions on packaging and character licensing.

It is unlikely that current systems in most companies track activities or expenses of promotions on packaging and character licensing primarily directed to children and adolescents. As a consequence, companies would likely need to do a substantial amount of original research and analysis to derive specific figures. Some manufacturers may be able to estimate within ranges and offer illustrations of such promotions, but the value of such an effort would be limited, as GMA/FPA doubts that the level of such activity would materially affect any trends evident from advertising and marketing in measured media.

e) Product placement.

It is GMA/FPA's understanding that in the general category of product placement, few companies, if any, engage in product placement that is primarily intended to appeal to children or adolescents. Although a few third party firms have begun to attempt to quantify trends in product placement,⁷ GMA/FPA is not aware of any outside firm that tracks this marketing activity with respect to demographic impression in concert with expenditures. Furthermore, many instances of product placement are not paid for by the manufacturer of a product but are simply editorial choices made by a producer often without express permission.⁸ With respect to product-placement efforts by manufacturers, GMA/FPA doubts that the level of such activity would materially affect any trends evident from advertising and marketing in measured media.

f) Time frame.

While the Commission's request for comment does not specify a period of time for the information it is seeking, GMA/FPA recommends that the Commission focus on a discrete period, such as a single fiscal year. For example, if the Commission chose to request information for Fiscal Year 2005, this would prove less burdensome on manufacturers than attempting to conform each manufacturer's fiscal year to a calendar year. Perhaps more importantly, using such a time frame would most likely provide the Commission a means of comparing current activities in the marketplace across manufacturers and advertisers.

⁷ See e.g. Nielsen Media Research, at www.nielsenmedia.com; iTVX, at www.itvx.com; and PQ Media, at www.pqmedia.com.

⁸ It is understood that product placement that is in exchange for consideration or pay would fall into the category of "paid" product placement.

4) How can the Commission minimize the burden on those collecting the information?

Fortunately, the Commission's goal of maximizing the quality of the requested information is compatible with the goal of minimizing the burden on the companies that would submit it. By focusing its collection efforts on measured media the Commission can be reasonably confident that it will receive reliable and relevant data while simultaneously reducing the burden on those charged with the data's collection. Further, GMA/FPA suggests that the Commission's data requests employ the existing product categories currently tracked by third-party ratings services. Due to most manufacturer's familiarity with these existing categories, use of such a technique will allow not only for uniform responses but will also enable respondents to focus on finding the requested data as opposed to debating definitions within a category.

Despite the attention paid of late to non-traditional unmeasured media, the actual role of these media in marketing activities remains very small and mainly unmeasured. The overwhelming majority of dollars spent on marketing activities primarily intended to appeal to children are still represented by television, radio, print, and the internet. It is because measured media continues to command the lion's share of the dollars that third party sources continue to provide the type of detailed information needed by manufacturers and advertisers to make marketing decisions. Thus, measured media will likely provide the most reliable and most relevant data available to the Commission in its search for information.

At a minimum, in order for the collection to remain within a feasible range of costs, GMA/FPA recommends that the Commission conform its proposed specifications to the following protocol:

a) Definitions.

Regardless of the data collected, it will be critical to the entire collection process that a consistent and understandable definition be used for marketing directed toward children and adolescents. GMA/FPA believes that a workable definition would be marketing "primarily intended to appeal to those audiences." For additional clarification, marketing in media or programming where children and adolescents do not account for the majority of the audience should be excluded from the definition.

b) Measured media.

Measured media should be collected according to the manner in which it is tracked in the ordinary course of business. As explained above, specifications tracking readily available categories of data will be relatively cost-effective to meet. Specifications that require original research and analysis would be unnecessarily and unpredictably expensive, and unlikely to yield meaningful data at the aggregate levels.

c) Unmeasured media.

As its name suggests, unmeasured media will be difficult to quantify and aggregate in any reliable manner. Because the amount of marketing primarily directed to children and adolescents in these categories is likely to be so small and so difficult to measure, GMA/FPA suggests that the Commission ask the companies to report the best estimates that companies reasonably can provide of the ranges of such expense, along with illustrations of the activities. For example, the specification could ask companies to estimate after conducting a due canvas of its marketing, promotion, and sales personnel whether expenditures on such activities fell within ranges of zero to \$10 million, \$10 million to \$100 million (rounded to the nearest multiple of \$10 million), or in higher amounts than \$100 million (rounded to the nearest multiple of \$50 million). Another reporting method could involve the reporting company estimating the percentage of total marketing expenditures these activities consume. In either case the request should allow companies to report such expenses in the aggregate, as an alternative to allocating them according to product categories. After reviewing the aggregate activities and illustrations reported, the Commission could ascertain whether the activities warrant further examination and then follow-up with an additional request for data if necessary.

Conclusion

We hope the information contained in this comment will help the Commission as it seeks to answer the questions posed in its Request. Should the Commission find in the course of its study that the assistance of GMA/FPA would be helpful in collecting information from its members, GMA/FPA would be glad to help.