

BEYOND COMMERCIALS: HOW FOOD MARKETERS TARGET CHILDREN

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I. INTRODUCTION

This Article argues that the rise of childhood obesity mirrors an unprecedented increase of largely unregulated food marketing aimed at children. Part II will show that most of the food marketed to children is high in calories, fat, salt, and/or sugar. It goes on to explain that food companies bypass parents and market directly to children in myriad ways, including traditional commercials, product placement, brand licensing, and product tie-ins.

Part II also describes how emerging technologies, such as the Internet and cell phones, provide food marketers new venues for targeting children. The Article then demonstrates that food marketing is ubiquitous in schools, where exclusive beverage contracts, corporate sponsored newscasts, branded teaching materials, and direct advertising are common. Part III argues that corporations undermine parental authority by encouraging children to nag for the products marketed to them. Part IV suggests that the advertising industry's efforts to self-regulate have failed, given the current prevalence of child-targeted food marketing.

Overweight children are at risk for a number of medical problems, including hypertension, asthma,¹ and Type 2 diabetes,² a

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1. See Comm. on Nutrition, Am. Acad. of Pediatrics, *Prevention of Pediatric Overweight and Obesity*, 112 PEDIATRICS 424, 424-25 (2003).

2. Ranjana Sinha et al., *Prevalence of Impaired Glucose Tolerance Among Children and Adolescents With Marked Obesity*, 346 NEW ENG. J. MED. 802,

disease that previously has been found primarily in adults.³ Since 1980, the proportion of overweight children ages six to eleven has more than doubled to 15.3%; for adolescents, the rate has tripled to 15.5%.⁴ This unprecedented escalation of childhood obesity mirrors the equally unprecedented escalation of largely unregulated marketing that targets children. In 1983, corporate advertisers spent a combined \$100 million advertising to children on television, which was essentially the only avenue available.⁵ Today, food and beverage advertisers alone spend between \$10 billion to \$12 billion a year targeting youth.⁶

There is no doubt that food marketing is a factor in children's consumption of unhealthy food and in the rise of childhood obesity. Studies conducted by such august bodies as the World Health Organization,⁷ the Kaiser Family Foundation,⁸ the British Food Commission,⁹ and the Institutes of Medicine¹⁰ all point to a link between child-targeted marketing and childhood obesity.

802 (2002) ("Childhood obesity, epidemic in the United States, has been accompanied by an increase in the prevalence of type 2 diabetes among children and adolescents.").

3. *See id.*

4. Cynthia L. Ogden et al., *Prevalence and Trends in Overweight Among US Children and Adolescents, 1999–2000*, JAMA, Oct. 9, 2002, at 1728.

5. JULIET B. SCHOR, BORN TO BUY: THE COMMERCIALIZED CHILD AND THE NEW CONSUMER CULTURE 21 (2004).

6. INST. OF MED. [IOM], ADVERTISING, MARKETING, AND MEDIA: IMPROVING MESSAGES, (2004), <http://www.iom.edu/Object.File/Master/22/609/0.pdf>.

7. *See* World Health Org. [WHO], Report of a Joint WHO/Food and Agric. Org. [FAO] Expert Consultation, *Diet, Nutrition and the Prevention of Chronic Diseases* (2003), http://whqlibdoc.who.int/trs/WHO_TRS_916.pdf.

8. *See* HENRY J. KAISER FAMILY FOUND., THE ROLE OF MEDIA IN CHILDHOOD OBESITY (2004), <http://www.kff.org/entmedia/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=32022>.

9. *See* INT'L ASS'N OF CONSUMER FOOD ORGS. [IACFO], BROADCASTING BAD HEALTH: WHY FOOD MARKETING TO CHILDREN NEEDS TO BE CONTROLLED (July 2003), http://www.foodcomm.org.uk/Broadcasting_bad_health.pdf (prepared by Kath Kelamy et al.).

10. COMM. ON PREVENTION OF OBESITY IN CHILDREN & YOUTH, [IOM], PREVENTING CHILDHOOD OBESITY: HEALTH IN THE BALANCE (Jeffrey P. Koplan et al. eds., 2005).

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II. FOOD MARKETERS INSINUATE THEIR BRANDS INTO CHILDREN'S LIVES

A. *The Continued Efficacy of Television Marketing Causes Television to Remain Marketers' Primary Medium for Influencing Children's Choices*

In spite of the growing popularity of the Internet and computer games, television is still the primary electronic medium with which children engage.¹¹ Children are often alone when they watch television, meaning that no adult is present to help them process the marketing messages permeating the medium.¹² Thirty two percent of children ages two to seven have a television in their bedrooms,¹³ as do 68% of children ages eight to eighteen,¹⁴ and 26% of children under two.¹⁵

Food advertising on television is effective.¹⁶ Children's requests for food products, misperceptions about nutrition, and increased caloric intake have been linked to their exposure to television commercials, as have parental purchases.¹⁷ One thirty-second food commercial can affect the brand choices of children as young as two, and repeated exposure has an even greater impact.¹⁸

11. See DONALD F. ROBERTS ET AL., GENERATION M: MEDIA IN THE LIVES OF 8–18 YEAR-OLDS, (THE HENRY J. KAISER FAMILY FOUND., Mar. 2005), <http://www.kff.org/entmedia/upload/Generation-M-Media-in-the-Lives-of-8-18-Year-olds-Report.pdf>.

12. DONALD F. ROBERTS ET AL., KIDS & MEDIA @ THE NEW MILLENNIUM 16 (Nov. 1999).

13. *Id.* at 17.

14. ROBERTS, ET AL., *supra* note 11, at 13.

15. VICTORIA J. RIDEOUT ET AL., THE HENRY J. KAISER FAMILY FOUND., ZERO TO SIX: ELECTRONIC MEDIA IN THE LIVES OF INFANTS, TODDLERS AND PRESCHOOLERS 16 (Fall 2003), <http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf>.

16. See COMM. ON FOOD MKTG. & DIETS OF CHILDREN & YOUTH, IOM, FOOD MARKETING TO CHILDREN AND YOUTH: THREAT OR OPPORTUNITY? (2006) (arguing that current food and beverage marketing practices puts children's long-term health at risk).

17. Katherine Battle Horgen et al., *Television Food Advertising: Targeting Children in a Toxic Environment*, in HANDBOOK OF CHILDREN AND THE MEDIA 447, 449 (Dorothy G. Singer & Jerome L. Singer eds., 2001).

18. See Dina L. G. Borzekowski & Thomas N. Robinson, *The 30-Second Effect: An Experiment Revealing the Impact of Television Commercials on Food Preferences of Preschoolers*, 101 J. AM. DIETETIC ASS'N 42, 42, 45

Cereals, sweets, and snack foods are among the most heavily advertised products during children's programming.¹⁹ When the authors viewed two hours of programming on the Cartoon Network between 5:30 p.m. and 7:30 p.m. on a weekday evening (prime viewing time for children)²⁰, they found that it contained twenty food commercials, or one every six minutes. Almost all of the foods advertised during children's television programs are high in calories, fat, salt, and/or sugar.²¹

Children also watch programs that are not designed solely for them. *American Idol*, a primetime show that, according to A.C. Nielsen, has consistently been a top-rated show for children ages two to eleven.²² A study of food commercials during the most popular shows for children ages six to eleven, including those outside of the traditional children's programming blocks, found that 83% were for snacks, fast foods, or sweets.²³ The researchers found that a diet based on such foods would exceed the United States Department of Agriculture Recommended Daily Allowances (USRDA) of fat, saturated fat, and sodium.²⁴

*B. Beyond Television Commercials, Marketers Use
Brand Licensing, Product Tie-ins, and Product Placement
to Keep Children Aware of Their Products*

In recent months, the food and marketing industries cited studies demonstrating that the average number of food advertisements on

(2001).

19. See Kristen Harrison & Amy L. Marske, *Nutritional Content of Foods Advertised During the Television Programs Children Watch Most*, 9 AM. J. PUB. HEALTH 1568, 1568 (2005).

20. See generally PARENTS TELEVISION COUNCIL, WOLVES IN SHEEP'S CLOTHING: A CONTENT ANALYSIS OF CHILDREN'S TELEVISION 4 (2006), available at <http://www.parentstv.org/PTC/publications/reports/childrensstudy/childrensstudy.pdf> (stating that children's television and cartoons are no longer confined to Saturday mornings and target five- to ten-year-olds "during the after-school hours of 3:00 p.m.–10:00 p.m. during the week and Saturdays from 7:00 a.m.–1:00 p.m.").

21. See *id.*

22. Josh Golin, Program Manager, Campaign for a Commercial-Free Childhood, Statement at the Coca-Cola Annual Meeting of Shareholders (Apr. 19, 2005), available at <http://www.commercialfreechildhood.org/actions/coke/shareholderstatement.htm>.

23. Harrison & Marske, *supra* note 19, at 1568, 1572.

24. *Id.* at 1571.

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television viewed by children has decreased over the past three decades.²⁵ As of the date of this Article, however, these studies have not been released to the public for examination as of the date this Article was written. Food marketing on television now extends far beyond the traditional fifteen or thirty-second commercial.²⁶ Concern regarding devices that allow viewers to fast forward through commercial breaks has caused advertisers to turn increasingly to brand licensing,²⁷ tie-ins,²⁸ and product placement.²⁹ These same marketing techniques are also prevalent in children's films, video games, and even songs.³⁰

Marketers design these techniques to lure children into selecting foods associated with media programs.³¹ The techniques also continually remind children of brands throughout the day. As one marketing expert noted, corporations are "trying to establish a situation where kids are exposed to their brand in as many different places as possible throughout the course of the day or the week, or almost anywhere they turn in the course of their daily rituals."³²

1. Brand Licensing Products with Characters Children Love

Brand licensing is particularly prevalent in children's television programming and is used to fund programs aimed at children, even on public television.³³ Once children associate a program or its char-

25. See, e.g., Todd J. Zywicki, Comments for the Federal Trade Commission and Department of Health and Human Services Workshop on Marketing, Self-Regulation, and Childhood Obesity (Aug. 12, 2005), <http://www.ftc.gov/os/comments/FoodMarketingtoKids/516960-00066.pdf>.

26. See COMM. ON FOOD MKTG. & DIETS OF CHILDREN & YOUTH, *supra* note 16, at 31–33.

27. Brand licensing is when an image or logo is leased for use on products other than the one for which it was created. Letter from Campaign for a Commercial-Free Childhood to Donald S. Clark, Fed. Trad Comm'n (June 7, 2005), <http://www.ftc.gov/os/comments/FoodMarketingtoKids/516960-00053.pdf>.

28. Tie-ins include promotions, giveaways at fast-food restaurants, and contests. See *id.*

29. Product placement occurs when a company pays to have its products inserted into the content of media. *Id.*

30. See discussion *infra* Part II.B.2–3.

31. See discussion *infra* Part II.B.1–3.

32. Tiffany Kjos, *Marketers Compete Fiercely for Spending on Kids*, ARIZ. DAILY STAR, Apr. 15, 2002, at 1.

33. See SUSAN LINN, CONSUMING KIDS: THE HOSTILE TAKEOVER OF

acters with a particular brand, the program itself becomes an advertisement for that food. Supermarket shelves are filled with examples of the links between media programs and food manufacturers.

SpongeBob SquarePants, from Nickelodeon's hit program, was Kraft's top selling macaroni and cheese in 2002 and the number one face-shaped Good Humor Ice Cream Bar.³⁴ Characters from another Nickelodeon hit program, *Rugrats*, now grace packages of Kraft Macaroni and Cheese,³⁵ as well as Farley's Fruit Rolls,³⁶ a peanut butter and jelly flavored Good Humor ice cream sandwich,³⁷ and Amuro bubble gum with comics printed on the gum itself ("view & chew").³⁸ Moreover, Nickelodeon and the Cartoon Network each has its own line of fruit snacks.³⁹

Several new food products accompanied the November 2004 release of *The SpongeBob SquarePants Movie*, including Kellogg's *The SpongeBob SquarePants Movie* Cereal, Keebler *The SpongeBob SquarePants Movie* E.L. Fudge Cookies, Kellogg's *The SpongeBob SquarePants Movie* Rice Krispie Treats, and Kellogg's SpongeBob SquarePants Pop Tarts.⁴⁰ At the same time, Burger King offered SpongeBob SquarePants toys and watches at its restaurants.⁴¹

CHILDHOOD 41–60 (2004).

34. C.W. Nevius, *One Extremely Absorbing Cartoon: Nickelodeon's Nutty 'SpongeBob SquarePants' Is a Surprise Runaway Success*, S.F. CHRON., Mar. 9, 2003, at 37.

35. Kraft, <http://www.kraft.com/100/innovations/kraftmac.html> (last visited Dec. 26, 2005).

36. *Favorite Brands Teams with Nickelodeon*, PROF. CANDY BUYER, Mar. 1, 1999, at 51.

37. *Rugrats*, <http://www.rugratonline.com/rrfood.htm> (last visited Dec. 26, 2005).

38. Retail Merchandising Archives, <http://www.retailmerchandising.net/candy/archives/0298/298ic.asp> (last visited Dec. 26, 2005).

39. See Kathy Saunders, *SpongeBob Snacks Are Fruity Fun*, ST. PETERSBURGH TIMES, Feb. 2, 2005, at 2E, available at <http://pqasb.pqarchiver.com/sptimes/advancedsearch.html> (search for "SpongeBob snacks are fruity fun"; then follow icon designating full text hyperlink immediately left of title of article).

40. Press Release, Campaign for a Commercial-Free Childhood, Parents Beware: SpongeBob Movie Rife with Commercialism (Nov. 16, 2004), <http://www.commercialfreechildhood.org/pressreleases/spongebob.htm>.

41. *Id.*

In response to growing concerns about childhood obesity and food marketing, Nickelodeon recently announced that SpongeBob SquarePants, Dora the Explorer, and other characters would appear on packages of spinach, carrots, and other vegetables.⁴² Nickelodeon will continue, however, to license these same characters to products of questionable nutritional value.⁴³ While it is possible that branding vegetables with cartoon characters will lead to a rise in sales, there is no evidence that it will lead to a decrease in children's desire for, or consumption of, branded junk food.

2. Junk-food Promotions Through Movie Tie-ins

Promotions and tie-ins that target children also frequently accompany films designed for a more general audience. *Star Wars: Episode III—Revenge of the Sith*, released in May 2005, had sixteen food promotions featuring twenty-five different products.⁴⁴ Many of these promotions encouraged young children to consume large portions of food that are high in calories, fat, and sugar. To collect all seventy-two *Star Wars* M&M wrappers, children would have to buy forty-five pounds of M&Ms (containing more than 10,000 grams of sugar).⁴⁵ To collect all thirty-one *Star Wars* Super D toys kids would have to buy more than five Burger King children's meals.⁴⁶ A typical children's meal of a cheeseburger, small fries, and kid's Coke contains 690 calories, 28 grams of fat, and 35 grams of sugar.⁴⁷ Food companies and fast food restaurants clearly chose the prizes in many of these promotions, such as toys, puzzles, and the Lego *Star Wars* Video Game, because they appeal to very young children, despite the fact that *Revenge of the Sith* was rated PG-13.⁴⁸

42. Michael Hill, *Hey, Popeye! It's SpongeBob Spinach*, SAN DIEGO UNION TRIB., July 19, 2005, at 1C, available at http://www.signonsandiego.com/uniontrib/20050719/news_1c19spongbob.html.

43. *Id.* (explaining that Nickelodeon has stated that it wants to work with its other food makers to make their SpongeBob products healthier).

44. Press Release, Campaign for a Commercial-Free Childhood, New *Star Wars* Food Lures Kids to the Fat Side: *Revenge of the Sith* Rife with Junk Food Promotions, (May 17, 2005), http://commercialfreechildhood.org/press_releases/starwarsfood.htm.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

Movie studios use food and beverage promotions to market films weeks before they premiere. More than a month before the blockbuster film *King Kong* opened, the giant gorilla was expected to appear on eighteen million boxes of Apple Jacks and Corn Pops, ten million packages of Butterfinger and Baby Ruth Bars, and in Burger King promotions.⁴⁹

3. Product Placement and Advertisements that Blur the Line into Content

The law technically prohibits product placement in children's television programming,⁵⁰ but it is rampant in children's favorite prime time programs. According to *Business Week*, Coca-Cola paid \$20 million for product placement in *American Idol*,⁵¹ which is rated consistently among the top ten shows for children ages two to eleven and frequently is among the top three.⁵² For example, in April 2005, each episode of *American Idol* exposed an average of nearly 2.5 million two to eleven-year-old viewers to Coca-Cola's product placement.⁵³

Product placement is not limited to television programs. No regulation exists for placing brands in films, video games, or on the Internet. McDonald's embedded their food products in the hit children's film *Spy Kids*.⁵⁴ Burger King used product placement in the film *Scooby Doo 2*.⁵⁵ Mountain Dew is pushing product place-

49. Mark Feeney, *Gorilla Marketing*, BOSTON GLOBE, Sept. 20, 2005, at C3.

50. Children's Television Programs: Report and Policy Statement, 39 Fed. Reg. 39,396 (1974).

51. Dean Foust & Brian Grow, *Coke: Wooing the TiVo Generation*, BUS. WK., Mar. 1, 2004, at 77.

52. Josh Golin, Program Manager, Campaign for a Commercial Free Childhood, Statement at the Coca-Cola Annual Meeting of Shareholders (Apr. 19, 2005), available at <http://www.commercialexploitation.com/actions/coke/shareholderstatement.htm>.

53. Abigail Azote, *An Incredible Night for the Kiddie Awards*, MEDIA LIFE, Apr. 8, 2005, http://www.medialifemagazine.com/News2005/april05/apr04/5_fri/news4friday.html.

54. Steven D. Greydanus, *Spy Kids (2001)*, DECENT FILMS GUIDE, <http://www.decentfilms.com/sections/reviews/1732> (last visited Mar. 9, 2006).

55. *SCOOPY DOO 2: MONSTERS UNLEASHED*, (Warner Bros. 2004), reviewed by Common Sense Media, Common Sense Note, <http://www.common sense media.org/reviews/review.php?id=2533&type=video%2FDVD> (last visited Jan. 22, 2006).

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ment to its logical conclusion by producing *First Descent*, a film about snowboarding.⁵⁶

Product placement in video and online games is also a booming business, expected to reach \$1 billion by the end of the decade.⁵⁷ For instance, Burger King ads appear in sports video games and the online game, *Everquest*, in which players can click on a Pizza Hut icon to have a real pizza delivered to them.⁵⁸ Pizza Hut and KFC are also destinations in the video/arcade game *Crazy Taxi*.⁵⁹ The popular children's Web site, *Neopets*, has trademarked the term "Immersive Advertising," a description of the way McDonald's, General Mills, Disney, and others incorporate their brands into children's use of the site.⁶⁰ As part of the game, children are encouraged to send their friends a Reese's Puffs Cereal screen saver and to watch commercials for sugar cereals.⁶¹ After placing EZ squirt ketchup on the *Neopets* Web site, a Heinz executive commented that product awareness "just went through the roof[.] Trials of the product increased by 18 percent."⁶²

Another kind of product placement that targets children is called "advergaming" in which computer games are completely built around products to keep children's attention focused on specific brands much longer than traditional commercials.⁶³ One site, called *Candystand*, consists of games featuring products from the food conglomerate Kraft, such as Lifesavers, Creme Savers, and Jello Pudding Bites.⁶⁴ Many advergaming give an advantage to players

56. Christopher Lawton, *PepsiCo's Mountain Dew Backs Film*, WALL ST. J., Sept. 12, 2005, at B4.

57. Gary Gentile, *Products Placed Liberally in Video Games*, ASSOCIATED PRESS BUS. WIRE, May 21, 2005, <http://sunherald.com/mld/sunherald/business/11700310>.

58. *Id.*

59. Gene Emory, *Brand Names Popping Up in Games Are Free Advertising—For a Reason: 'You Don't Pick Up a Facial Tissue, You Pick Up a Kleenex,' Marketer Says*, VANCOUVER SUN, Jan. 31, 2002, at F2.

60. E. Winding, *Immersed in Child's Play: A Website that Offers Virtual Pets Has Found a Successful Way of Advertising to Children*, FIN. TIMES, June 10, 2002, at 17.

61. Neopets, General Mills Cereal Adventure, http://www.neopets.com/sponsors/cereal_adventure.phtml (last visited June 2, 2005).

62. Winding, *supra* note 60.

63. See Chris Powell, *Get in the Game*, MKTG. MAG., July 28 – Aug. 4, 2003, at 11.

64. Candystand.com, <http://www.candystand.com> (last visited Mar. 29,

who have purchased specific foods. For example, Disney's *Virtual Magic Kingdom* rewards players who enter secret codes found on specially marked packages of Kellogg's cereal with extra game credits and virtual accessories for their character.⁶⁵ The *SpongeBob SquarePants Bubble Trouble Cereal Game* does not allow children to play more than once unless they can answer questions about the cereal's packaging.⁶⁶

Even music is not exempt from product placement. McDonald's plans to produce rap songs promoting the Big Mac have stalled,⁶⁷ but there is every reason to expect that they and other food companies will keep trying.

*C. As Mobile Phones are Sold to Younger Children,
Food Marketers Make Campaigns Truly Mobile*

Between 2002 and 2004, the number of twelve to fourteen-year-olds with cell phones jumped from 13 to 40%, and cell phone companies now market these phones to children as young as six.⁶⁸ This provides food marketers with a new way to target youth. Frito Lay, for instance, created an integrated marketing campaign to promote Black Pepper Jack Doritos combining text messaging, billboards, and the Web with traditional television and radio commercials.⁶⁹ Cell phone-based contests, such as Pepsico's "Call Upon Yoda" sweepstakes⁷⁰ and Nestle's "Grab. Gulp. Win!,"⁷¹ are

2004).

65. Disney Online, *Virtual Magic Kingdom*, http://vmk.disney.go.com/vmk/en_US/index?name=VMKHomePage (last visited Sept. 4, 2005).

66. *SpongeBob Squarepants—Bubble Trouble Cereal Game*, <http://www.nick.com/ads/kelloggs/sbsp/> (last visited Sept. 4, 2005) (click "Play" in order to begin game).

67. Marc Graser, *McDonald's Rap Song Product Placement Stalls: No Suitable Tune Found in Current Submissions*, ADAGE.COM, Sept. 26, 2005, <http://www.adage.com/news.cms?newsId=46150>.

68. Laura Petrecca, *Cell Phone Marketers Calling All Preteens*, USA TODAY, Sept. 5, 2005, at 4B, available at http://www.usatoday.com/money/industries/technology/2005-09-05-teen-cell-phones_x.htm.

69. Frito Lay, "If Not Now When?"—Doritos Launches Innovative Campaign, http://www.fritolay.com/fl/flstore/cgi-bin/ProdDetEv_Cat_304_NavRoot_303_ProdID_390425.htm (last visited Mar. 1, 2005).

70. Press Release, Pepsico, *Pepsi Turns to the Force and the Dark Side for Star Wars: Episode III Revenge of the Sith Promotions* (Mar. 24, 2005), <http://phx.corporate-ir.net/phoenix.zhtml?c=78265&p=irol-newsArticle&ID=688807&highlight=>.

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increasingly common, and Coca-Cola plans to launch a line of mobile advergames for phones.⁷²

*D. Marketing Products Through
Books and Toys for Young Children*

Infants and toddlers are not exempt from food marketing. Product placement can be found in children's books, including those for babies. Charlesbridge publishes *The M&M's Brand Counting Book*,⁷³ and HarperFestival publishes *Kellogg's Froot Loops: Color Fun Book*.⁷⁴ These cardboard books are particularly troublesome because their covers often look exactly like the packaging of the corresponding food products. Literacy experts encourage parents to read to babies and toddlers, citing gains in literacy and the promotion of positive parent-to-baby bonding.⁷⁵ Babies and young children, whose mothers or fathers read to them (especially when their parents read to them on their laps or at bedtime), associate warm, snuggly feelings with reading, and early on reading becomes a pleasurable experience for them.⁷⁶ If these same parents read such books as the *Hershey Kisses: Counting Board Book*⁷⁷ or the *Skittles Riddles Math*⁷⁸ to their children, one can assume that these babies gain equally warm, snuggly feelings about candy.

Food companies also market to children through toys. For instance, Mattel manufactures a Cabbage Patch Doll named Peanut Butter and Jelly Kid, designed to sell a Smucker's product called *Goobers*, and HotWheels makes toy cars sporting the M&M candy logo.⁷⁹ Barbie dolls work at both Pizza Hut and McDonald's, and

71. Alice Z. Cuneo, *More Big Marketers Turn to Mobile Phone Ads*, ADAGE.COM, July 11, 2005, <http://www.commercialfreechildhood.org/news/marketersmovetophones.htm>.

72. *Id.*

73. BARBARA BARBIERI MCGRATH, *THE M&M'S BRAND COUNTING BOOK* (1994).

74. BARBARA BARBIERI MCGRATH, *KELLOGG'S FROOT LOOPS: COLOR FUN BOOK*, (2001).

75. LINN, *supra* note 33, at 102.

76. *Id.*

77. BARBARA BARBIERI MCGRATH, *HERSHEY'S KISSES: COUNTING BOARD BOOK* (1998).

78. BARBARA BARBIERI MCGRATH, *SKITTLES RIDDLES MATH*(2001).

79. Letter from The Campaign for a Commercial-Free Childhood to Donald S. Clark, Office of the Sec'y, Fed. Trade Comm'n (June 7, 2005), <http://www>

the latter partners with Play Doh and Easy Bake, as well.⁸⁰

Coca-Cola, which denies that it markets to children under twelve,⁸¹ sells toys such as *Coca-Cola Uno* for children as young as eight, *Coca-Cola Checkers* in a Tin for children as young as six,⁸² and a *Coca-Cola Wipe-off Memo Board with Coke Magnets & Dry Erase Markers* for children as young as three.⁸³

Food marketers even target preschool children in daycare centers. Kellogg's has created an "educational program," entitled "Spark Creativity with Froot Loops," that was sent to daycare centers around the country.⁸⁴ The program consists of a letter to parents and a booklet with suggestions for art projects using Froot Loops cereal.⁸⁵

E. Food Companies Enlist Children to Market Food Products Through Word of Mouth

In addition to the more traditional marketing techniques and venues described above, food companies are taking advantage of new techniques that engage children by marketing products through word of mouth. After being lured with free products, food companies urge children to engage in seemingly spontaneous discussions with their friends. The discussions are actually planned promotions.⁸⁶ For instance, Procter & Gamble has a division called "Tremors" that works with teens and young adults to promote

.ftc.gov/os/comments/FoodMarketingtoKids/516960-00053.pdf.

80. *Id.*

81. See Coca-Cola Responsible Marketing to Kids, http://web.archive.org/web/20041012121447/www.activefactor.com.au/resp_mark.html (last visited Oct. 17, 2005).

82. Coca Cola Checkers in a Tin (game provided by USAopoly).

83. Coca-Cola Wipe-off Memo Board with Coke Magnets & Dry Erase Marker (game provided by Tin Box Company).

84. *Things We Wish We Didn't Know*, CCFC News (Campaign for a Commercial-Free Childhood), Fall 2005, at 4, <http://www.commercialfreechildhood.org/newsletter/fall2005.htm>.

85. *Id.* For a sample of the booklet's content, see *From*, Campaign for a Commercial-Free Childhood, "Spark Creativity with Froot Loops" a New "Educational Program" that was Sent to Daycare Centers Around the Country <http://www.commercialfreechildhood.org/newsletter/sparkcreativitywithfrootloops.htm>. (last visited Nov. 15, 2005).

86. See, e.g., Richard H. Levey, *Live From Ad:Tech: P&G's Buzz on Viral Marketing*, PROMO, June 19, 2003, http://promomagazine.com/news/marketing_live_adtech_pgs/index.html.

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products, such as Pringles potato chips, to their friends.⁸⁷ Dairy Queen teamed with a marketing company to create a campaign urging customers as young as thirteen to tell their friends about ice cream treats called “Blizzards.”⁸⁸

F. Food Marketers Follow Children from Their Homes to Schools Through Corporate Sponsorship, Direct Sales, Incentives and More Advertising

Marketing to children is not limited to time spent playing or using media. In 2000, a report from the federal government’s General Accounting Office (GAO) called marketing in schools a “growing industry.”⁸⁹ Companies find marketing in schools to be especially effective because students are a captive audience unable to avoid commercial messages.⁹⁰ Corporate-sponsored newscasts, exclusive beverage contracts, corporate-sponsored teaching materials, and book covers featuring ads are just a few of the ways that food marketers infiltrate educational settings.

1. Corporate-Sponsored School Programming: Channel One

According to its Web site, nearly 12,000 schools (consisting of almost eight million students) show the corporate-sponsored news program, Channel One.⁹¹ In exchange for free video equipment, schools agree to show a Channel One program every day to their students.⁹² A single Channel One program consists of ten minutes of news and approximately two minutes of commercials. Food advertising has been quite popular on Channel One. A survey of 100

87. *Id.*

88. *Dairy Queen Celebrates the 20th Birthday of the Blizzard with the Blizzard Fan Club, a Web Site and Email Loyalty Program Built by Fishbowl Marketing*, BUS. WIRE, June 14, 2005, <http://www.globeinvestor.com/servlet/ArticleNews/story/BWIRE/20050614/20050614006050>.

89. U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-00-156, PUBLIC EDUCATION: COMMERCIAL ACTIVITIES IN SCHOOLS 6 (2000), available at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=he00156.pdf&directory=/diskb/wais/data/gao>.

90. *Prologue to CONSUMERS UNION, CAPTIVE KIDS: A REPORT ON COMMERCIAL PRESSURES ON KIDS AT SCHOOL*, Prologue (1998), available at www.consumersunion.org/other/captivekids/.

91. ChannelOne.com, About Channel One, <http://www.channelone.com/common/about/> (last visited Nov. 11, 2005).

92. *Id.*

random episodes broadcast between 1997 and 2002 found that 27% of the ads were for junk food, by far the leading category of products advertised.⁹³ Regular advertisers on Channel One include Pepsi, Mountain Dew, Snickers, and Kellogg's Pop Tarts.⁹⁴ It should be noted that Channel One is currently facing serious financial difficulties, and its future in schools is in doubt.⁹⁵ These difficulties are due, in part, to the fact that Kellogg's and Kraft—in response to growing public pressure to curtail junk-food marketing—no longer advertise on Channel One.⁹⁶

2. Vending Machines, Direct Sales and Exclusive Agreements

In 2000, a national survey found that 93.6% of high schools, 83.5% of middle schools, and 58.1% of elementary schools sold soda or other sugar-laden soft drinks on their premises.⁹⁷ The same survey also found that nearly two-thirds of all schools allowed the sale of “[s]alty snacks not low in fat[,]” and more than half of all schools allowed the sale of candy.⁹⁸ In addition, more than 20% of schools sell brand-name fast food on their premises.⁹⁹ While several states and a number of school districts have instituted new policies to restrict the sale of unhealthy foods in schools, an August 2005 GAO report stated that junk food was still available in nearly nine out of ten schools.¹⁰⁰

Many school districts sign “pouring rights” contracts with beverage companies such as Coca-Cola or Pepsi.¹⁰¹ These contracts give beverage companies exclusive rights to sell their products at

93. Obligation, Inc Survey of Channel One Advertising (1997–2002), <http://www.obligation.org/adsurvey.html> (last visited Jan. 22, 2006).

94. *Id.*

95. See Claire Atkinson, *Channel One Hits Bump, Losing Ads and Top Exec*, ADVERTISING AGE, Mar. 14, 2005, at 3.

96. *Id.*

97. CTR. FOR DISEASE CONTROL, FACT SHEET: FOODS AND BEVERAGES SOLD OUTSIDE OF THE SCHOOL MEAL PROGRAMS, http://www.cdc.gov/HealthyYouth/shpps/factsheets/pdf/outside_food.pdf (last visited Mar. 18, 2006).

98. *Id.*

99. *Id.*

100. U.S. GOV'T. ACCOUNTABILITY OFFICE, GAO-05-563, SCHOOL MEAL PROGRAMS: COMPETITIVE FOODS ARE WIDELY AVAILABLE AND GENERATE SUBSTANTIAL REVENUES FOR SCHOOLS 3 (2005), available at <http://www.gao.gov/new.items/d05563.pdf>.

101. *Id.* at 15.

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school events and place vending machines on school property.¹⁰² The amount of money a school receives is often tied to the sale of beverages, thus giving schools an incentive to encourage the consumption of soft drinks.¹⁰³ Nearly half of all schools in 2003–2004 had an exclusive beverage agreement, and the percentage of middle schools with an exclusive beverage contract more than doubled between 1998–1999 and 2003–2004.¹⁰⁴ In one-third of these schools, the agreement covers five years or more.¹⁰⁵

3. Incentive Programs

Many schools now use corporate-sponsored incentive programs as rewards for students. For example, Pizza Hut's Book-It program offers free pizzas to students who read a certain number of books.¹⁰⁶ The program involves millions of students and recently expanded into preschools.¹⁰⁷ Similarly, Papa John's Pizza gives students who earn at least a C in all of their classes a "Winner's Card" that can be exchanged for prizes including pizza, ice cream, and donuts.¹⁰⁸

4. Direct Advertising on School Space

Advertising frequently appears on interior and exterior school walls, gymnasiums, scoreboards, and at school athletic events.¹⁰⁹ A 2004 report found a significant increase in advertising on school buses.¹¹⁰ Much of this advertising is for sugar-laden drinks and snack foods.¹¹¹ Cover Concepts, a company that distributes free textbook covers, posters, and other sponsored materials in schools,

102. *Id.*

103. MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* 204–05 (2002).

104. *Id.* at 20.

105. *Id.* at 15.

106. ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* 56 (Perennial 2002).

107. *Id.*

108. ALEX MOLNAR, EPSL-0409-103-CERU, EDUCATION POLICY STUDIES LABORATORY, *VIRTUALLY EVERYWHERE: MARKETING TO CHILDREN IN AMERICA'S SCHOOLS* 3031 (2004), available at <http://www.asu.edu/educ/eps1/CERU/Annual%20reports/EPsl-0409-103-CERU.pdf>.

109. *Id.* at 34–37.

110. *Id.* at 35.

111. *Id.* (naming Dole and Tropicana as big-ticket advertisers for school buses).

claims it reaches 30 million schoolchildren in more than half of the nation's schools.¹¹² Cover Concepts counts McDonald's, Pepsi, Frito Lay, M&M's, and General Mills among its clients.¹¹³

5. Sponsored Educational Materials and Programs Have Their Own Agenda

Many corporations produce educational materials for use in the classroom.¹¹⁴ Consumers Union reviewed seventy-seven corporate-sponsored classroom kits and found nearly 80% were biased or incomplete, "promoting a viewpoint that favors consumption of the sponsor's product or service or a position that favors the company or its economic agenda."¹¹⁵ Analyses of teaching materials produced by the food industry support this finding.¹¹⁶ For instance, according to a Kellogg's nutrition curriculum, students should only be concerned about fat content when choosing breakfast.¹¹⁷ The nutrition curriculum fails to mention sugar, a prominent ingredient in many cereals.¹¹⁸ Frito-Lay distributed a poster about nutrition, exhorting kids to "Snack for Power, Snack for Fun!"¹¹⁹ The poster asks: "Did you know, Cheetos, Doritos, and other Frito-Snacks give you the bread/brain power that the food guide pyramid says you need?"¹²⁰

Coca-Cola has partnered with Reading is Fundamental¹²¹ to provide elementary schools with a reading program called "The Coca-Cola Story Chasers Mobile."¹²² In recent years, McDonald's has been particularly aggressive in pursuing in-school marketing

112. CoverConcepts, Free Stuff for Kids!, <http://www.coverconcepts.com/> (last visited Nov. 12, 2005).

113. Mary Story & Simone French, *Food Advertising and Marketing Directed at Children and Adolescents in the US*, 1 INT'L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY 3, 5-7 (2004), available at <http://www.ijbnpa.org/content/pdf/1479-5868-1-3.pdf>.

114. SCHOR, *supra* note 5, at 92-95.

115. CONSUMERS UNION, *supra* note 90.

116. SCHOR, *supra* note 5, at 93.

117. *Id.*

118. *Id.*

119. LINN, *supra* note 33, at 89.

120. *Id.*

121. Coca-Cola Youth Partnership Home Page, <http://www.youthdevelopment.coca-cola.com/home.html> (last visited Nov. 16, 2005).

122. See Kim Hackett, *Coke's Reading Program Can Leave a Funny Taste*, SARASOTA HERALD-TRIB., Aug. 19, 2005, at B4.

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opportunities. The fast-food chain sends Ronald McDonald into schools to promote, among other things, literacy,¹²³ character education,¹²⁴ and first aid.¹²⁵

In September 2005, McDonald's unveiled "Passport to Play" teaching materials and giveaways, replete with the McDonald's logo, that suggest ways for getting children to be more active.¹²⁶ With this, they join several other food companies that produce physical education materials for schools. By emphasizing exercise as the key to a healthy lifestyle, these materials serve the dual purpose of promoting brands to children while shifting the focus away from the role that their food products play in the obesity epidemic. McDonald's expects its program to be in at least 31,000 schools nationwide.¹²⁷ Similarly, Coca-Cola's "Live It!" program features Lance Armstrong and other popular athletes who encourage kids to be active.¹²⁸ "Live It!" is expected to reach more than two million sixth graders.¹²⁹ Through its "Balance First" fitness program, Pepsi plans to reach three million elementary school students.¹³⁰

6. Corporations Push Their Brands Through School Fundraising

Scarce funding for public education has provided new opportunities for companies to market in schools under the guise of fundraising. Programs such as Campbell's Soup Labels and General

123. Paragon Elementary, Paragon, Ind., A Visit from Ronald McDonald, http://msdadmin.scican.net/paragon/Activities/a_visit_from_ronald_mcdonald.htm (last visited Nov. 12, 2005).

124. Townville Elementary, Townville, S.C., Special Events, <http://www.anderson4.k12.sc.us/schools/tes/Special%20Events.htm#Safe%20Kids%20Assembly> (last visited Nov. 16, 2005).

125. Press Release, Save A Life Foundation (SALF), Ronald McDonald Joins SALF Instructor Juan Sotomayor at Monroe Elementary (Nov. 22, 2004), http://www.salf.org/media/news/2004_11/november_22_2004.aspx.

126. See Nanci Hellmich, *McDonald's Kicks Off School PE Program*, USA TODAY, Sept. 13, 2005, at 7D.

127. *Id.*

128. Press Release, The Coca-Cola Co., Coca-Cola System and Lance Armstrong Lead the Charge With New Live It! Program in Middle Schools, (May 26, 2005), available at http://www.coca-cola.com/presscenter/nr_20050526_americas_liveit.html.

129. *Id.*

130. Michele Simon, *Big Food's 'Health Education,'* S.F. CHRON., Sept. 7, 2005, at B9, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/09/07/EDGH4EJB7U1.DTL>.

Mills Box Tops for Education¹³¹ encourage children to put pressure on their parents to buy particular brands to raise money for their school, even if these brands are more expensive or less desirable than the brands the family would normally buy. Similar programs also encourage students to sell candy such as M&M's to raise money for schools.¹³²

III. THE MARKETING MAELSTROM AND THE NAG FACTOR

Food comprises a significant part of what advertisers market to children, but it takes place in the context of marketing for other products. Toys, clothing, accessories, movies, television programs, video games, and countless other consumer goods are all marketed extensively to children, as are products traditionally purchased by adults such as automobiles and air travel.¹³³

The sheer volume of marketing is stressful for families.¹³⁴ As most parents struggle to set limits, corporations often undermine parental authority by encouraging children to nag.¹³⁵ They also inundate children with images that portray adults as incompetent, mean, or absent, while encouraging children to engage in behaviors that are troublesome to parents.¹³⁶ A 1999 article in *Advertising Age* illustrates this point: "Mothers are known for instructing children not to play with their food. But increasingly marketers are encouraging them to."¹³⁷ Instead of acquiescing to parents' concerns, the marketing industry actually uses parental disapproval as a strong selling point with kids.¹³⁸ In explaining the strategy for selling Kraft Lunchables, a marketing expert put it this way: "Parents do not fully

131. See AmericanTeachers, Fundraising, <http://www.americanteachers.com/fundraising.cfm> (last visited Nov. 12, 2005).

132. See School-Fundraisers.com, Brand Candy & Lollipops Fundraisers, <http://www.school-fundraisers.com/brandcandy/index.html> (last visited Nov. 12, 2005).

133. See LINN, *supra* note 33, see also SCHOR, *supra* note 5, at 15–17.

134. LINN, *supra* note 33, at 31–40.

135. *Id.*

136. *Id.* at 188–90 (discussing the negative portrayal of parents in some commercials).

137. Judann Pollack, *Foods Targeting Children Aren't Just Child's Play: Shape-Shifting Foods, 'Interactive' Products Chase Young Consumers*, ADVERTISING AGE, Mar. 1, 1999, at 16.

138. See Linda Neville, *Kids' Brands Must Exercise Pest Control*, BRAND STRATEGY, Nov. 2001, at 17.

approve—they would rather their child ate a more traditional lunch—but this adds to the brand’s appeal among children because it reinforces their need to feel in control.”¹³⁹

IV. GOVERNMENT REGULATION VERSUS SELF-REGULATION

The escalation of marketing to children and the rise of childhood obesity both occurred while the Children’s Advertising Review Unit—the advertising industry’s self-appointed watchdog—served as the primary regulatory agency responsible for monitoring child-directed advertising.¹⁴⁰ As a result, advocates are calling for increased government regulation of food marketing to children.¹⁴¹

The food and advertising industries publicly claim that the current system of self-regulation is effective.¹⁴² Yet surveys of marketers suggest otherwise. An online poll published in *Advertising Age* revealed that 77% of AdAge.com voters believe there is a direct link between television ads and childhood obesity.¹⁴³ In 2004, an industry-sponsored survey of youth marketers found that many respondents had concerns about the advertising industry’s treatment of children: 91% agreed that young people are “marketed to in ways [that] they don’t even notice”; 73% agreed that “companies put pressure on children to pester their parents to buy things”; 61% agreed that “advertising to children begins at too young an age”; and 58% agreed that “there is too much marketing and advertising directed toward children.”¹⁴⁴ These responses raise serious questions

139. *Id.*

140. See Letter from the Campaign for a Commercial-Free Childhood to Donald S. Clark, *supra* note 79.

141. *See id.*

142. WILLIAM MACLOED ET AL., GROCERY MFRS. ASS’N, COMMENTS OF GROCERY MANUFACTURERS ASSOCIATION CONCERNING THE FEDERAL TRADE COMMISSION AND DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC WORKSHOP ON MARKETING, SELF-REGULATION & CHILDHOOD OBESITY (July 1415, 2005), <http://www.ftc.gov/os/comments/FoodMarketingtoKids/516960-00057.pdf>; ASS’N OF NAT’L ADVERTISERS, INC., COMMENTS OF THE ASSOCIATION OF NATIONAL ADVERTISERS, INC. BEFORE THE FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (June 7, 2005), <http://www.ftc.gov/os/comments/FoodMarketingtoKids/516960-00009.pdf>.

143. *Voted & Quoted*, ADVERTISING AGE, Mar. 8, 2004, at 18.

144. See, e.g., JOHN GERACI ET AL., HARRIS INTERACTIVE/KID POWER, POLL OF YOUTH MARKETERS 32 (2004), available at http://www.harrisinteractive.com/expertise/pubs/kidpower_Poll_Results.pdf.

about the efficacy of self-regulation and suggest that marketers may be violating their own ethics in order to remain competitive in the marketplace.

V. CONCLUSION

The rise of childhood obesity mirrors the unprecedented increase of food marketing aimed at children. Companies are bypassing parents and targeting children directly in myriad ways, including through the media, through toys, and even in schools. While food companies and the marketing industry tout self-regulation as a solution to the problem, current levels of child-targeted food marketing and the industry's own concerns about the ethics of current marketing techniques strongly suggest that self-regulation has failed. Only an across-the-board set of policies—designed and enforced by a body independent from the advertising and food industries—can both protect children's health and maintain a level playing field between companies.