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**Public Health
Law Center**

AT WILLIAM MITCHELL
COLLEGE OF LAW

Putting a Stop to Misleading Marketing

How to Report Ads That Violate Industry Self-Regulatory Guidelines

Despite high rates of childhood obesity in the United States, unhealthy food and beverage products continue to be heavily marketed to toddlers, children, and teens. According to a 2012 report from the Federal Trade Commission (FTC), the food industry spends \$1.8 billion annually to market foods and beverages to children. This marketing takes a variety of forms, from traditional media to digital marketing to cross-promotions with television or movie characters.

This guide provides some background on advertising self-regulation and explains how to file a complaint with these programs.

There has been some modest improvement in the nutritional quality of foods marketed to children in recent years, but these changes have been small in the context of children's diets as a whole and in light of federal nutrition recommendations.

Government protections for young consumers are limited. Consumer fraud laws, which apply to adults and children alike, prohibit companies from advertising in a way that is deceptive, misleading, or unfair. In addition, the federal Children's Television Act puts some limits on the number of commercials that can be shown during children's programs. But there otherwise are no federal laws that specifically address concerns about how products are marketed to children or that limit what types of food or drink products can be target-marketed to children.

This publication was based on research provided by Julie Ralston-Aoki, staff attorney for the Public Health Law Center.

Though there is little government regulation of food marketing to children, there is a system of industry self-regulation. Self-regulation generally involves a code of conduct or standards to which companies adhere, as well as a body that is charged with enforcing the code of conduct or standards. Researchers and advocates have questioned the efficacy of these self-regulatory programs, but the programs have played an important role in promoting advertising standards in the United States.

There are two industry self-regulatory programs that focus on advertising directed at young children:

- The Children’s Advertising Review Unit (CARU)
- The Children’s Food and Beverage Advertising Initiative (CFBAI)

Both of these programs only address concerns about marketing to children ages 11 and younger, with the exception of some provisions in CARU’s program addressing online privacy for children under age 13. These industry self-regulatory programs provide an opportunity for researchers, parents, and advocates to express concerns about problematic children’s food marketing practices and to encourage self-regulatory efforts by food companies and marketers.

Complaints relating to marketing practices that are deceptive or unfair should be referred to the offices of state attorneys general as well as to the FTC. See our publications explaining how to refer concerns to those government units at www.changelabsolutions.org/publications/identifying-misleading-ads.

About the Programs

The Children’s Advertising Review Unit (CARU)

Launched in 1974, CARU is an arm of the Advertising Self-Regulatory Council (ASRC), which is administered by the Council of Better Business Bureaus (CBBB). CBBB, a nonprofit organization, works to create an ethical marketplace where buyers and sellers can trust each other.

CARU monitors national advertising of all products—not just foods and beverages—with the self-described purpose of ensuring that advertising “primarily directed” at children ages 11 and younger is not deceptive, inappropriate, or unfair. Its intent is to “advance truthfulness, accuracy, and consistency” with its own self-regulatory program and with other relevant laws. CARU has a written set of standards that companies are supposed to follow when they advertise products to children ages 11 and younger. (It also has standards relating to online data privacy for kids who are ages 12 and younger; this guide focuses on enforcement of the advertising standards, rather than the online privacy standards.)

The Children’s Food and Beverage Advertising Initiative (CFBAI)

Launched in 2006, the CFBAI is a voluntary program also funded and staffed by the CBBB. It focuses specifically on food and beverage marketing directed at children ages 11 and younger. Each participating company has made a written pledge about what food and beverage products it will market to young children and how it will do so. As of July 2012, 16 companies had joined the initiative.

CARU

What does CARU prohibit or require?

CARU draws upon federal case law and regulations, guidance issued by the FTC, and similar legal sources in deciding what is deceptive or unfair. (See www.changelabsolutions.org/publications/identifying-misleading-ads for detailed explanations of what types of practices are considered deceptive or unfair under the FTC Act and other consumer protection laws.)

CARU also has created its own guidelines to help define deceptive, unfair, or inappropriate advertising. The current version of the guidelines is structured around eight core principles, which in general emphasize that marketers have “special responsibilities” when advertising to children. They reflect that CARU’s approach is to evaluate child-targeted marketing from the perspective of a typical child, keeping in mind children’s “inexperience, immaturity, susceptibility to being misled or unduly influenced, and their lack of cognitive skills needed to evaluate the credibility of advertising.”

In addition to the core principles, CARU’s program includes general standards, which are divided into topical categories (e.g., product presentation and claims, endorsements, and blurring of advertising and editorial/program content).

CARU includes standards that are specific to food advertising, such as whether advertising might mislead children about how much real fruit is in a product, or whether an ad shows children eating more than the serving size of a food product or eating a snack food as a meal. Many of CARU’s inquiries involving food advertisements have to do with whether a premium (such as a toy giveaway) is featured more prominently than the product or whether disclosures about how to enter a contest without buying the product are made clearly enough that children will be likely to understand them.

How is compliance monitored?

CARU takes complaints from consumers or other companies, but very little of its work comes from these kinds of complaints. Most of its compliance work is generated through CARU’s routine monitoring activities. CARU’s staff reviews around a thousand ads per month, from a variety of sources

including print, TV, web, and packaging. CARU staff also prescreens ads (or storyboards for ads) for its member companies to help them identify potential problems before the ads start running.

If CARU staff members think an ad does not comply with program standards, they can initiate an investigation, ask the company for information (such as studies the company may have done about how children perceived the ad), or ask the company to explain its arguments as to why the ad complies with CARU's standards. The steps of this process, including time limits, are explained in the Advertising Self-Regulatory Council's Policies and Procedures (see "ASRC Procedures" at www.asrcreviews.org).

How are CARU guidelines enforced?

If CARU finds that an ad does violate its standards, it may recommend that the company stop running the ad, modify it to address the violation, or refrain from running the ad in the future. Or the company may offer to make changes that CARU decides will bring the ad into compliance. If a company disagrees with a CARU decision, it can appeal the decision to the National Advertising Review Board, but such appeals have been rare in CARU cases.

CARU issues press releases about its decisions and recommendations and publishes them in an online database and in case reports issued ten times per year. (Companies must pay a subscription fee for access to the database. However, academics and the public may be able to obtain access without charge. Anyone interested in this option should contact CARU directly.)

CARU has no power to punish companies for violating its standards—its only "penalties" are negative publicity and a referral to a government agency like the FTC.

How do I report a complaint to CARU?

CARU accepts complaints from companies and consumers. Companies must pay a filing fee and follow the ASRC procedures. Consumers do not have to pay any filing fees, nor do they have to follow the procedures that companies do.

Consumers can report their complaints through CARU's website or by fax or mail. If the complaint is about an ad that appeared in print or on TV, radio, or the web, CARU's online complaint form will probably be adequate. However, if the complaint involves packaging or point-of-sale advertising, the online form does not include those types of ads, so it would be advisable to submit the complaint in writing via mail or fax.

Another limitation of CARU's website complaint form is that it requires complainants to indicate whether the ad is directed to children and/or to parents. If "yes" responses are selected for both of these, the website will not allow use of the online

complaint form. This is confusing because an ad could be mainly of interest to children but also of interest to parents. It also seems questionable whether the general public has a sufficient level of marketing expertise to determine whether an ad is directed *only* to children or *only* to parents. What's more, this exclusion of ads that are directed at both groups does not appear to be consistent with CARU's written standards. Those who wish to use the online form probably will want to check "no" in response to the question about whether the ad is directed to parents if they believe the ad is in any way directed to children.

Visit CARU's webpage for complaint submissions:

www.asrcreviews.org/2011/10/contact-caru

Complaints about ads can also be sent by mail or email to:

Children's Advertising Review Unit

Consumer Complaint

112 Madison Ave., 3rd Floor

New York, NY 10016

lbean@asrc.bbb.org

What information should I include in a complaint?

Remember that CARU only monitors national advertising directed to children ages 11 and under, and online data collection for children ages 12 and under.

To submit a complaint, the following information is necessary:

- The company or advertiser's name
- The product or company being advertised
- The type of advertisement (packaging, television, online)
- Details about where you saw the ad (which magazine, what TV program, in what store or restaurant and where in the store or restaurant)
- Details about when you saw the ad (date, time of day)
- A brief description of the ad, with details showing that the ad was directed at children (e.g., the presence of child actors, cartoon characters or licensed characters, or celebrities popular with young children; the type of product is one that inherently appeals to children; whether the ad was shown during a children's program or in a magazine for children)
- If possible, document the ad or marketing material (saving web screen shots or scanned or hard copies of print ads, recording copies of television ads) and include a copy with your complaint

In addition, it would be helpful to include:

- Any information you have about how an actual child responded to the ad (e.g., did you observe any children who also saw the ad, and did they say something or behave afterward in ways that made you think the ad prompted their reactions?)

- A clear reference to the CARU core principle or standard you think the ad violates
- A clear and concise explanation about why you think the ad violates a CARU core principle or standard
- A reference to any relevant CARU case decisions, by case number, including a statement about why you think the case is relevant to the situation at hand

To learn more about CARU's core principles, see www.caru.org/guidelines/guidelines.pdf. For more information on CARU's food-related guidelines and to see examples of cases, download our chart at www.changelabsolutions.org/publications/identifying-misleading-ads.

Consumers who submit complaints are notified about whether the claims have been forwarded to an attorney for review, to a local Better Business Bureau for other action (if the complaint has more to do with business practices than with advertising), or to an appropriate law enforcement agency (for example, in the case of potential fraud). Cases are confidential until they are complete. Once CARU has completed its review, it issues a press release, which is posted on its website.

CFBAI

What does CFBAI prohibit or require?

CFBAI requires its members to pledge to refrain from using certain methods to sell their products to children ages 11 and younger if the advertisement is “primarily directed” to these children, unless the product meets certain nutritional criteria. Initially, participating companies were allowed to set their own nutritional standards for what products they would market to young kids. Starting in 2014, each company will be required to meet uniform nutrition criteria established by CFBAI.

The companies participating in CFBAI as of February 2013 were: Burger King Corp., Campbell Soup Company, The Coca-Cola Company, ConAgra Foods, The Dannon Company, General Mills, The Hershey Company, Hillshire Brands, Kellogg Company, Kraft Foods Group, Mars, McDonald's USA, Nestlé USA, PepsiCo, Post Foods, and Unilever United States.

The participating companies are listed on the CFBAI website at www.bbb.org/us/childrens-food-and-beverage-advertising-initiative.

The CFBAI program covers several but not all types of marketing channels or techniques, including measured media (such as TV, radio, print, and third-party websites); company-owned websites or micro-sites; video games; interactive games that are available for free or nominal charge; use of third-party licensed characters, movie tie-ins, and celebrity endorsements; product placements in any medium; and in-school advertising

of branded products in elementary schools (with some exceptions). The CFBAI does not include certain kinds of marketing in its definition of “advertising,” including point-of-sale materials, packaging, company-owned characters, and in-school branded product displays, fundraising activities, and charitable donations.

The CFBAI's pledge framework allows companies to set their own standards for defining what is “primarily directed” to children under age 12.

How is compliance monitored?

The CBBB monitors participating companies' compliance with their pledges. Participating companies are required to submit compliance reports to the CBBB, and the CBBB states that it monitors (or reviews monitoring of) company-owned websites and measured media (which includes television, radio, print, and third-party websites). The CBBB publishes annual progress reports describing any compliance concerns it identified and how these were handled. But neither the data it collects from participants nor its own studies are available for independent review. The CFBAI also has not publicly explained its process for handling complaints from the public or other third parties.

How are CFBAI pledges enforced?

According to the program's Enhanced Core Principles, the contracts signed by CFBAI companies state that companies that do not comply with their pledges after being given notice and an opportunity to fix the problem can be expelled from the CFBAI. Additionally, notice of an expulsion can be given to the FTC or other regulatory authorities “under appropriate circumstances.”

How do I report a complaint?

The CFBAI has a “Contact Us” webpage: www.bbb.org/us/children-food-beverage-advertising-initiative/contact.

Complaints about ads can also be sent by mail or email to:

CFBAI

3033 Wilson Blvd., Suite 600
Arlington, VA 22201
(703) 247-9382
kidsinitiative@council.bbb.org

What information should I include in a complaint?

Because the CFBAI has not established a process for handling complaints from the public, it is unclear what kinds of information the program would find helpful or compelling. Additionally, the structure of the program does not readily lend itself to monitoring by regular members of the public

because the rules depend upon company-specific nutritional criteria (at least until 2014) and specialized definitions of what constitutes “advertising” that is “primarily directed” to children ages 11 and younger.

That being said, anyone who has reason to believe that a CFBAI member company is not complying with its pledge should report this concern to the CFBAI. Particularly with social media campaigns, which are often quick, fleeting, and difficult to track, complaints from the public could be useful in alerting the CFBAI to possible problems.

The following information would be useful to include:

- The company or advertiser’s name
- The product being advertised
- The type of advertisement (television, online, cell phone)
- Details about where you saw the ad (which magazine, what TV program, in a text message)
- Details about when you saw the ad (date, time of day)
- A brief description of the ad, with details showing the ad was directed at children (e.g., the presence of child actors, cartoon characters or licensed characters, or celebrities popular with young children; whether the ad was shown during a children’s program or in a magazine for children)
- If possible, document the ad or marketing material (saving web screen shots or print ads, recording copies of television ads) and include a copy with your complaint
- Any information you might have about how an actual child responded to the ad (e.g., did you observe any children who also saw the ad, and did they say something or behave afterward in ways that made you think the ad prompted their reactions?)
- A clear reference to the CFBAI pledge provision that you think the ad violates
- A clear and concise explanation about why you think the ad violates the CFBAI’s program

If I see marketing or advertising for non-nutritious food/ beverages that I think might be deceptive or unfair, who else should I report my concern to?

See NPLAN’s publication *Identifying and Reporting Unfair, Misleading, and Deceptive Ads and Marketing* at www.changelabsolutions.org/publications/identifying-misleading-ads for detailed information about what to look for and how to file a complaint with the FTC.

In addition, copies of complaints can be sent by mail or email to:

Angela J. Campbell

Institute for Public Representation (IPR)
600 New Jersey Ave. NW
Washington, DC 20001
(202) 662-9535
campbeaj@law.georgetown.edu

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