



December 14, 2009

Ms. Margo G. Wootan, D.Sc.
Director, Nutrition Policy
Center for Science in the Public Interest
1875 Connecticut Ave., N.W.
Suite 300
Washington, D.C. 20009-5728

Dear Ms. Wootan:

Thank you for your letter concerning the scope of the Council of Better Business Bureau's Children's Food and Beverage Advertising Initiative (CFBAI) elementary school principles. Your letter acknowledges that the CFBAI and its members have carefully considered school-based advertising, but asks us to revisit and revise the scope and coverage of the exclusions to this principle. As explained below, this principle was thoroughly considered at the time we issued the Fact Sheet on the Elementary School Advertising Principles in April 2009. We appreciate CSPI sharing its feedback, but after further careful consideration we are retaining the principles as they have been more fully developed in the Fact Sheet.

Background

Since its launch in 2006, the CFBAI and leading food and beverage advertisers (now numbering 16) have committed to changing the mix of food and beverage advertising to children under 12. One of the core principles of the Initiative is a requirement that each participant commit to not advertise food or beverage products in elementary schools, including through the use of coupons, food samples, or through student-directed items such as posters or tray liners that advertise specific branded products. This means that participants agree not to advertise even better-

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for-you or healthier branded foods in elementary schools. As we reported in our 2008 Progress Report,¹ compliance regarding this commitment is excellent.

In April 2009, the Initiative published a Fact Sheet on the Elementary School Advertising Principles to provide greater clarity about the scope and coverage of the CFBAI's restriction on advertising branded food and beverage products in elementary schools.² In the Fact Sheet, we explain that the CFBAI takes an expansive view of the scope of the elementary school setting, covering the entire elementary school, not just the classrooms. Additionally, the Fact Sheet explains that the program does not limit the ability of companies to communicate with administrators, school employees, parents or other adults, since our focus is on advertising primarily directed to children under 12. It also does not restrict participants from engaging in partnerships or arrangements such as fundraising efforts that schools, school-based parent organizations or school booster clubs may seek with them to advance their educational or enrichment goals for the schools' students. Additionally, the Fact Sheet explains that participants may provide schools with public service messages and curriculum materials that identify the sponsor so long as the sponsor identification is not the focal point of such materials.

Below we address each issue you raised about the CFBAI's Elementary School Principles and further explain why each of the current exclusions is appropriate and will be continued.

The Sale of Food and Beverages in Schools is Beyond the Scope of the Initiative

First, you suggest that the Elementary School Principles should include food or beverage products sold out of vending machines, a la carte or in school stores. This is well beyond the scope of the program's focus on *advertising*. Schools sell branded products in schools. Some branded products may be sold as part of the school lunch program, which is highly regulated by state and federal law. School jurisdictions or individual schools also may allow food and beverage products to be offered for sale outside of the school lunch program. Accordingly, children naturally will see brand

¹ "The Children's Food & Beverage Advertising Initiative in Action: A Report on Compliance and Implementation During 2008 (hereafter "the CFBAI 2008 Report") is available online at <http://www.bbb.org/us/Storage/113/Documents/finalbbbs1.pdf>.

² The CFBAI Elementary School Fact Sheet is available online at www.bbb.org/us/storage/0/Shared%20Documents/ESFactSheetFinalWord.pdf.

names and logos on those products, on the racks or other devices that hold the items, on placards identifying products that food service personnel are serving, or on menus that schools prepare and distribute. This type of ordinary and regular signage identifies the products for purchasers as well as for personnel who stock the display racks or devices. Materials such as posters or tray liners that feature products or brands that are not tied or related to identifying the items being offered for sale are *not* permitted under the Initiative.

As your letter noted, food and beverage product sales in schools are also the subject of an entirely separate initiative called the Alliance for a Healthier Generation (AHG). The 40 companies participating in this program, including many CFBAI participants, have entered into Memorandums of Understanding with AHG, under which they agree to offer products complying with AHG nutrition standards to the distribution channels that sell products to elementary, middle, and high schools outside of the national school meal program. The most recent report regarding implementation of the AHG School Beverages Guidelines, issued two years into a three-year implementation period in September 2008, showed that the beverage mix in schools has changed. The report found 92% of elementary school contracts were already compliant with the commitment that beverage options in elementary schools include only 100% fruit juices, low-fat milks and bottled water.³ The industry has completed the three-year implementation period for the voluntary agreement and has begun to compile a final progress report, which AHG and the beverage industry expect to release in early 2010.⁴

We continue to believe that the sale of foods and beverages in schools (and relevant signage identifying products that are being offered for sale) should not be covered by the Initiative. With the extensive regulation of products in this area and another very effective public-private partnership already addressing this area, the CFBAI will continue to focus on child-directed advertising issues only.

³ The 2007-2008 School Beverage Guidelines Progress Report can be viewed at www.ameribev.org/nutrition--science/school-beverage-guidelines/.

⁴Statement regarding School Beverage Guidelines final progress report," 9/1/2009, available at www.healthiergeneration.org/media.

The Initiative Allows Participants to Support Schools and Parents in Their Fundraising Choices

Your second concern relates to school fundraising activities that may involve the sale by students of branded foods, some of which you assert “are of poor nutritional value.” The Initiative allows participants to support schools in fundraising efforts that are chosen by schools or parents. Whether or not to engage in any particular fundraising effort is determined by the individual school or school-sponsored program. In addition, if parents do not wish to allow their children to participate in selling products or to attend a fundraising event at a local restaurant, they may elect to not have their children participate, or may choose not to take them to the restaurant. We respect the rights of school administrators and parents to make decisions regarding fundraising activities based on the best interests of their schools’ and students’ needs. The Initiative does not seek to substitute its judgment for that of schools or parents regarding how this fundraising should be conducted.

Your letter also objects to other fundraising efforts allowed by the Initiative, such as adult-directed label-redemption programs efforts that may incidentally involve the exposure of elementary students to product labeling.⁵ Schools are the facilitators and beneficiaries of these long running, highly regarded programs. That the labels from qualifying products that parents purchase and save for these programs generally are collected in schools⁶ simply makes common sense. As shown in Figures 1 and 2, the General Mills⁷ and Campbell collection bins⁸ do not refer to the company, depict any products or brands, or contain any product images.

⁵ Students’ exposure to brand or product information could occur when notification regarding the programs is sent home to parents, when parents send the product labels back to the schools via the students, and when students drop off the labels.

⁶ Campbell reports that online redemption is a growing phenomenon, particularly popular with grandparents who can redeem labels for students who live in a different state. “Campbell’s Charity Push Counters Gloom,” Brandweek.com (6/20/09), available online at www.brandweek.com/.

⁷ The Box Tops program does not exclusively involve food or beverage products. General Mills reported in 2008 that approximately 40% of the redemptions come from non-food items, such as tissues, paper towels and food storage bags. CFBAI 2008 Report at 52, n.115.

⁸ Campbell re-designed its collection bins earlier this year.

Figure 1



General Mills Collection Bin

Figure 2



Campbell Collection Bin

As noted in CFBAI's 2008 Progress Report, the Campbell and General Mills label redemption programs are extremely popular with parents and other adults in school communities. The participation rate for each program is vast, and both have provided generous benefits to their participants.⁹ These programs represent important sources of funds for schools particularly in a time of economic difficulty, and we continue to believe that the Initiative should not interfere with participants' support of fundraising efforts that may provide critical funds or other resources to schools.

Sponsoring Public Service Messages/Curricula Materials and Identification of the Sponsor is in the Public Interest

Another area of collaboration with schools permitted under the Initiative involves public service messaging and curriculum materials. As your letter notes, the CFBAI allows participants to provide school officials with public service messages or curricular materials. Schools determine what information is useful and appropriate for their students and the Initiative allows participants to collaborate with schools in this effort. Public service messages could address nutrition or physical fitness issues, or messages emphasizing the importance of reading or education. Public service messages or curricular materials provided by participants offer schools up to date

⁹ In the 2007-2008 school year, General Mills reported that it distributed approximately \$40 million in total to the more than 65,000 participating schools, with an average of \$600 per school. CFBAI 2008 Report at 52, n.115. The Campbell Labels for Education program has relationships with 75% of U.S. schools and 40,000 coordinators. It has donated over \$110 million in equipment and materials in its 36-year history. *Id.* at 52, n.97.

and/or colorful or visually appealing educational tools that may not otherwise be available to schools.

CSPI objected to the identification of the sponsor, a practice allowed under the CFBAI principles. However, we believe that it is important, as a matter of transparency about the source of the information, to allow this sponsorship information.¹⁰ The Elementary School Principles are clear that these materials may not include a sales message or depict branded products, and that the identification may not be the focal point or centerpiece of the message.¹¹ We believe that the benefits provided by these materials outweigh any possible concerns regarding sponsorship identification.

Permitting Participants to Provide Branded Items to School Personnel But Not Children Is Consistent with our Focus on Child-Directed Advertising

CSPI stated it objects to the fact that students may see branded items for personal use provided by participants to school administrators or food service employees. The CFBAI Elementary School Principles are not intended to address communications between participants and adult school administrators or employees. Participants thus are permitted to provide adults with items for personal use such as hats or calendars, which students may see. We note, however, that distribution of branded items to adults appears to be declining.

The Initiative Focuses on Children Under 12 and Thus Does Not Cover Middle Schools

CSPI stated that it would prefer that the program cover middle schools. The Initiative addresses advertising primarily directed to children under 12, and the Elementary School Principles therefore apply to schools that include the grades for children under 12, which are generally grades K-6. The Initiative focuses on children under 12 because their ability to understand the persuasive intent of advertising is still developing. It is generally recognized that older children are better able to understand and appreciate the persuasive nature of advertising. Seventh and eighth

¹⁰ CFBAI's policy regarding sponsorship identification is similar to the underwriting policies of PBS, which are based on FCC laws and regulations. The PBS Guidelines for On-Air Underwriting Credits provide that underwriters of programs must be identified with an on-air credit, but this credit may not depict or mention the sponsor's product. See Rule 2: Children's Programs, available at www.pbs.org/producers/guidelines/uwcredits_2.html.

¹¹ Our experience, and participants' 2008 compliance reports, indicate that only a few CFBAI participants engaged in public service messaging in schools or provided curricular materials in 2008. A description of those activities can be found in the individual participant sections of the CFBAI 2008 Report.


graders, and thus most middle school kids, are over 12 and thus beyond the scope of the Initiative and its rationale. To the extent that a school district combines elementary, middle and/or junior high schools (i.e., K-8), the principles cover facilities that the various schools share, although areas designated primarily for 7th and 8th graders are not subject to the principles.

The Elementary School Principles Apply to School-Sponsored Activities Throughout the Day

Finally, your letter praises the CFBAI for covering the entire school campus, grounds and buses for the regular day, but contends that the Initiative's principles also should apply to school-sponsored activities through the extended day. In fact, the Initiative *does* cover both regular and extended day school activities when children are under the control of the school or third parties on behalf of the school. The Initiative does not, however, apply to school events held *after* the extended school day where parents and elementary school children are attending together. We believe that proscribing advertising during the day at times when children are not in the care of their parents, but permitting such messages when parents are present, is an appropriate distinction.

Thank you for providing comments on the Initiative's Elementary School Principles. We always welcome questions and comments about the program, and we would be pleased to discuss this issue further. We continue to believe, however, that these principles strike an appropriate balance between prohibiting advertising and allowing other activities that identify products that are being sold, or are otherwise beneficial and conducted at the discretion of school administrators or parents. For your information, we have posted this response on BBB's website.

Sincerely yours,



Elaine D. Kolish
Vice President and Director
Children's Food and Beverage Advertising Initiative