

## Introduction

### State Law Approaches to Address Digital Food Marketing to Youth

This report is intended to be a practical resource for state attorneys general concerned about the impact of digital food marketing on the health of children and teens in their states, and describes state legal approaches available to address harmful digital food marketing. Digital marketing encompasses a vast range of marketing tactics and uses a variety of technologies to market foods and beverages to child and teen consumers. Food and beverage marketing is designed to make consumers aware of products, build brand recognition and brand loyalty, and ultimately to drive purchases. Purchases by younger children are often achieved by generating a purchase request to a parent. One food company that markets to youth reported to the Federal Trade Commission (FTC) that “75% of purchasers surveyed said they bought the product for the first time primarily because their child requested it.”<sup>1</sup> Food and beverage marketing to older children and teens is designed to secure a share of their direct purchasing power. Food industry market research into teen spending habits submitted to the FTC found that “food is the most common item purchased” by teens.<sup>2</sup>

### What Is In This Report?

Put simply, the “whole point of taking action to reduce the amount of food marketing to children is to lessen preference for, and sales and consumption of, fatty, sugary and/or salty processed foods.”<sup>3</sup> This report focuses on how state consumer protection laws can be used to limit harmful food marketing to children, and covers the following topics:

- Key differences between digital and traditional food marketing
- The use of food packaging as a jumping-off point into digital food marketing
- State jurisdiction to regulate digital food marketing



- Mobile food and beverage marketing
- The role states can play to address privacy concerns raised by digital marketing
- Facebook advertising
- Incentive-based interactive food marketing promotions targeting youth
- Gaming as used with young children and teens to market unhealthy foods
- Summaries of the laws and regulations of ten states relevant to digital food marketing

Each of these topics is covered in an individual section that can be read on its own or in conjunction with other sections.

### Why Are Certain Digital Marketing Tactics Included In This Report?

Inclusion of a particular marketing tactic in this report is based upon whether the digital marketing tactic:

- Is material to the purchase of a food or beverage item by a child, teen or, in some cases, a parent
- Is unaddressed by self-regulatory guidelines (e.g., marketing targeting adolescents)
- Falls outside of the scope of the FTC’s current rulemaking authority (e.g., unfair advertising to children)
- Has been the subject of prior self-regulatory enforcement, but remains relatively unchanged and widespread
- Is accompanied by complex disclaimers, rules or privacy disclosures
- Extracts time and effort from children and teens to market foods and beverages to their peers
- Is designed to increase the number of “eating

- occasions” of an unhealthy food product
- Exploits age-specific vulnerabilities of child and teen consumers

Each of the tactics discussed in this report meet some or all of these criteria.

Successful public health efforts to support healthy diets in childhood and adolescence will put children on a path for lifelong health. Addressing digital food and beverage marketing targeting youth that is designed to maximize consumption of unhealthy foods and beverages is a key step in the process towards ensuring a healthy future.

## **What Is the Harm?**

Diet-related chronic disease is a major concern for state and local governments. Many states are at a critical juncture with respect to the future health of their residents. The toll in human suffering and healthcare costs from diet-related disease is stark:

- The percentage of teenagers testing positive for diabetes or pre-diabetes more than doubled from 9% in 1999-2000 to 23% in 2007-2008.<sup>4</sup>
- The Centers for Disease Control estimates that as many as 1 in 3 U.S. adults could have diabetes by 2050.<sup>5</sup>
- Diabetes is the leading cause of non-traumatic lower limb amputation among adults in the United States.<sup>6</sup>
- Researchers estimate that the number of people in the United States with diabetes who are living with the loss of a limb will nearly triple by the year 2050.<sup>7</sup>
- African Americans and Hispanics are almost 3 times as likely as non-Hispanic whites to suffer from lower-limb amputations.<sup>8</sup>
- The current medical cost of adult obesity in the U.S. is estimated at \$147-\$210 billion per year, \$61.8 billion of which is paid for by Medicare and Medicaid.<sup>9</sup>
- Medical costs associated with treating obesity-related disease are conservatively estimated to increase by an additional \$22 billion per year by 2020 and \$48 billion per year by 2030.<sup>10</sup>

## Endnotes

<sup>1</sup>FED. TRADE COMM'N, A REVIEW OF FOOD MARKETING TO CHILDREN AND ADOLESCENTS: FOLLOW-UP REPORT 85 (December 2012), <http://www.ftc.gov/os/2012/12/121221foodmarketingreport.pdf>.

<sup>2</sup> *Id.* at 89.

<sup>3</sup> Corinna Hawkes, *Food Packaging: the Medium is the Message*, 13 PUB. HEALTH NUTRITION 298 (2010).

<sup>4</sup> Roni C. Rabin, *Diabetes on the Rise Among Teenagers*, WELL BLOG (May 21, 2012, 12:01 AM), <http://well.blogs.nytimes.com/2012/05/21/diabetes-on-the-rise-among-teenagers/>.

<sup>5</sup> Press Release, Centers for Disease Control and Prevention (CDC), Number of Americans with Diabetes Projected to Double or Triple by 2050 (Oct. 22, 2010), <http://www.cdc.gov/media/pressrel/2010/r101022.html>.

<sup>6</sup> CDC, National diabetes fact sheet: national estimates and general information on diabetes and prediabetes in the United States, 2011(2011), <http://www.diabetes.org/in-my-community/local-offices/miami-florida/assets/files/national-diabetes-fact-sheet.pdf>.

<sup>7</sup> Kathryn Ziegler-Graham et al., *Estimating the Prevalence of Limb Loss in the United States: 2005 to 2050*, 89 ARCHIVES OF PHYSICAL MED. & REHAB. 422, 424 (March 2008).

<sup>8</sup> American Diabetes Ass'n, Living with Diabetes: African Americans & Complications, <http://www.diabetes.org/living-with-diabetes/complications/african-americans-and-complications.html>; Nat'l Limb Loss Info. Ctr., Minorities, Diabetes and Limb Loss (May 2008), [http://www.amputee-coalition.org/fact\\_sheets/multicultural/all\\_groups.pdf](http://www.amputee-coalition.org/fact_sheets/multicultural/all_groups.pdf).

<sup>9</sup> Jeffrey Levi et al., *F as in Fat: How Obesity Threatens America's Future 2012*, 1, 32 (2012), <http://healthyamericans.org/assets/files/TFAH2012FasInFatFnlRv.pdf>.

<sup>10</sup> Y. Claire Yang et al., *Health and Economic Burden of the Projected Obesity Trends in the USA and UK*, 378 THE LANCET 815, 818 (2011).