

# It's Not Just for Teens: Viral Marketing to Young Children

## A Digital Food Marketing Legal Issue Brief

### Introduction

Viral marketing campaigns are designed to mask their commercial origin. Hence they raise multiple issues in protecting consumers, especially children. Viral tactics are growing online through stealth marketing campaigns designed to encourage product promotion through “peer-to-peer” advertising. Concern about online viral marketing has predominantly focused on its use with teens and adults<sup>1</sup> but increasingly younger children also are targets.

Food marketers are in the forefront of using viral marketing online. A recent series of complaints filed with the Federal Trade Commission (FTC) by The Institute for Public Representation at Georgetown Law on behalf of the Center for Digital Democracy alleged that major food companies and children’s entertainment companies had violated the Children’s Online Privacy Protection Act (COPPA) by using the viral marketing tactic known as “refer-a-friend” on websites directed to children under 13 years of age.<sup>2</sup> Refer-a-friend e-mail techniques prompt children to enter their names and the names and email addresses of their friends. The information is used to generate personalized email advertisements with hyperlinks to a company’s child-targeted website. McDonald’s, General Mills, Subway, Nickelodeon and Cartoon Network were named in the complaints. McDonald’s has since removed all refer-a-friend capability from its website [Happymeal.com](http://Happymeal.com),<sup>3</sup> but now references the practice in its revised privacy policy as a way that it markets to children.<sup>4</sup>

State Attorneys General (AGs) have played an important role by taking swift action to address deceptive digital marketing tactics under state Unfair and Deceptive Acts and Practices (UDAP) statutes as well as other grants of statutory authority like COPPA. The use of viral marketing techniques to young children warrants careful scrutiny under state consumer protection law. This issue brief provides additional information about the problematic practice



of viral marketing to young children. The value of viral marketing to firms, and how tactics like refer-a-friend may violate state UDAP statutes will be discussed. Viral marketing of unhealthy foods and beverages is of particular concern in light of its impact on child food preferences and its potential to contribute to the obesity crisis confronting America’s children.

### Viral Marketing

Viral marketing is a principal way advertisers reach young consumers online. From digital buzz campaigns designed to promote online word of mouth, to peer-to-peer practices encouraging friends to buy or “like” products, or by promoting branded games or videos expressly designed to go viral, advertisers increasingly encourage kids to become “influencers.”<sup>5</sup> Today, marketers know that the best way to sell their products is to stealthily have children become their (unpaid) brand spokespeople. Viral campaigns targeting kids have been shown to be very effective, including when targeting multicultural youth.<sup>6</sup>

#### Refer-a-friend Email Systems

Refer-a-friend email systems exemplify viral marketing to young children. A typical refer-a-friend email system works as follows:

1. A child visits a firm’s website.
2. The child plays an advergame (an online game that contains marketing).
3. At the end of the advergame the child has the option to “Tell a Friend” or “Send to a Friend”.
4. The child is asked to enter a first name and the first names and email addresses of one or more friends.
5. The child is told an email was successfully sent to one or more friends.
6. Personalized email messages with hyperlinks to the firm’s website are sent.

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7. The recipient children open the messages and click on the hyperlinks to the firm's website.
8. A cookie or series of cookies is silently downloaded granting the marketer access to the new user's data.

All of these steps are completed without prior consent either from the parent of the child providing friends' email addresses or the parents of the children who receive the unsolicited email messages. Many parents likely are unaware that their young children have become active participants in a viral marketing scheme at all, much less one focused on selling foods and beverages of poor nutritional quality.

### How Firms Derive Value from Viral Marketing

Viral or word-of-mouth (WOM) marketing is used to drive traffic to a firm's website, Facebook page or online marketing application. Tactics like refer-a-friend email systems "turn email into a type of advocacy or word of mouth endorsement that is passed along from one consumer to the next."<sup>7</sup> Value is derived from this practice in many ways including: increased product sales, recruitment of lifelong brand loyal users, increased ad revenue, and introduction to new customers with access to those users' data.

#### Increased Product Sales

The ultimate goal of marketing food products and entertainment brands to children is to build permanent brand loyalty and a long lifetime of product purchases. Food companies engage in a wide variety of online marketing tactics that may include viral marketing.<sup>8</sup> The value to a firm for a viral campaign that drives product purchases can be calculated in terms of the number of products purchased in response to the campaign. For example, a firm could place special codes redeemable for online content or a prize on food products typically consumed by young children. Embedded in the campaign could be tactics that enlist participating children to encourage other children to get their own codes by purchasing products in the special packaging. The product sales in response to the viral marketing are a direct form of value the firm derives from the viral campaign. Increasingly, viral campaigns are also tied to generating "likes" and other favorable endorsements of products on social media sites like Facebook that are sent

to one's friends. Fans who generate "likes" of a product are viewed as especially valuable to marketers.<sup>9</sup>

#### Lifetime Customer Value

Researchers also have developed a lifetime customer value model for WOM marketing.<sup>10</sup> Value is calculated in terms of customer strings defined as the "set of purchases by customer(s) linked by the word-of-mouth communication process initiated by [a] focal customer."<sup>11</sup> Value is equal to the purchases made by customers acquired as a result of positive word-of-mouth spread by the focal customer. In the case of refer-a-friend email systems, the child who provides her friends' email addresses is the focal customer and the children receiving the emails make up the other customers in the string. In the case of a food company, the lifetime customer value can be thought of in terms of food product purchases by the child-customers in the customer string over their lifetimes that flow from viral marketing.

#### Increased Digital Ad Revenue

Many firms generate advertising revenue by hosting online ads. Ad revenue can be calculated at a set rate per thousand impressions (e.g., 40 cents per every 1000 impressions). When a child clicks on a hyperlink and views banner ads on a site she creates a new ad impression for the firm. For example, Nick.com and CartoonNetwork.com, both named in the COPPA complaints, host third-party ads. Each new visitor to Nick.com and CartoonNetwork.com as the result of viral marketing like refer-a-friend may translate to increased ad revenue for those firms.<sup>12</sup> While per-impression ad revenue is very small, multiplied across a large number of new users it can add up. New ways to target users based on their worth to a company—called "real-time bidding"—enables marketers to increase their ad revenues by better identifying the potential of prospective consumers to drive sales.<sup>13</sup>

#### Access to New Users' Data

Viral marketing is also a relatively low-cost method for marketers to gain access to children's data including browsing history and demographic data, revealed by persistent identifiers such as cookies. Information about individual consumers is an increasingly valuable asset in this era of big data. Young people are lured to websites and encouraged to fill out forms, enter contests or contact their friends. Through what the Wall Street Journal calls

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the “surveillance economy,” cookies and other stealth tracking software are placed on consumers’ computers so more information can be collected. So-called behavioral profiles of young consumers are a valuable commodity.<sup>14</sup> Data collected about children and their friends can be used for product promotion, sales, and lifelong brand loyalty.

### Viral Marketing to Young Children Is Deceptive

There are two sets of children impacted by viral marketing: (1) the children who engage in viral marketing by providing their friends’ email addresses or contacting other children with commercial messages on behalf of a company, and (2) the children who receive the viral marketing messages in the form of personalized email advertisements or other communications. Viral marketing can be deceptive to both sets of children. In general, a practice is deceptive if it is likely to or has the tendency to mislead a consumer acting reasonably under the circumstances and the deception is material or impacts the consumer’s behavior to her detriment.<sup>15</sup>

#### Misleading Children to Become Viral Marketers

Viral marketing turns children into unwitting viral marketers promoting a company’s brand image and products to their friends. The tactic is reminiscent of the 1960s FTC case, *In re Wilson Chemical Co., Inc.*, that addressed deceptive recruiting of “children of tender years” to become sales agents.<sup>16</sup> There, the chemical company defendant placed ads in comic books promising free prizes in return for sending in a coupon. Children were sent a prize along with a number of items to sell. When no commission or payment for the items was received, Wilson Chem. Co. pursued sham collections against the children’s families. The Commission found that the child targets of the ads were “unqualified by age or experience to judge soundly the merits of...[Wilson Chemical Co.’s] offers...” and that the “sole purpose of the advertisements...[was] to obtain sales agents and thereby promote the sale of the... [company’s products].”<sup>17</sup> The promise of free prizes and merchandise was deemed a “misleading enticement to become a sales agent.”<sup>18</sup>

The deception at the heart of *Wilson Chemical Co.* was the use of trickery to enlist children to become sales agents. Viral marketing to young children violates the same basic principle in the digital age by deceptively enlisting children to engage in marketing on a company’s behalf. Despite the sophistication of the technology they use, children today remain uniquely “unqualified by age or experience” to evaluate viral marketing and firms use deceptive tactics to hide the true intent of viral marketing.

For example, prior to removing refer-a-friend from HappyMeal.com, McDonald’s placed “Send to a Friend” buttons at the end of advergames on the website. Children were told: “Fill out the form below to send this game to your friends and family!”<sup>19</sup> In reality, children were sending an email with a hyperlink to an advergame and the statement, “Remember to visit HappyMeal.com for more fun and games and to see the toys!”<sup>20</sup> The site deceptively told children that they were sending their friends a game when in fact they were sending their friends commercial advertisements. Like in *Wilson Chemical Co.*, viral marketing tactics like refer-a-friend essentially turn children into unpaid sales agents by using deception to get them to provide their friends’ first names and email addresses—information that is used to generate valuable personalized email advertising messages to recruit other potential child-customers and gain access to their data.

#### Protecting Children Receiving Viral Marketing Communications

Viral marketing works because people typically do not recognize it as traditional marketing but rather as a recommendation from a friend. Refer-a-friend emails are personalized by using the referring child’s name and the recipient children’s names in the subject line and body of the email. For example, McDonald’s used the friend’s first name as the first word in the subject line and signed the email using the name of the referring child.<sup>21</sup> This tactic gives the recipient child the impression that the email is a personal email directly from someone she knows and likes.<sup>22</sup> It is employed to increase the likelihood that a child will open the email and click on a hyperlink to the firm’s website where she will be exposed to marketing for the firm’s products and have cookies dropped on her

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computer. Clicking on the hyperlink is an action the child would not have taken but for the deceptive refer-a-friend email, and the firm gains value when the child becomes a new user on its website. While beyond the scope of this issue brief, it is important to note that a legal analysis of how to protect child-recipients of unfair or deceptive viral marketing via electronic communication must also take into account federal CAN-SPAM preemption and will vary by jurisdiction.

**Conclusion**

State AGs play an important role in protecting child-consumers from unfair and deceptive digital marketing tactics that exploit their lack of sophistication. Children who participate in viral marketing by providing their friends' email addresses or through other online communication have no concept of the value that flows to a firm when it gains new users in terms of product sales, lifetime customer value, increased ad revenue, and access to new users' data. Children who receive viral marketing messages like personalized email advertisements are exposed to marketing for products that are potentially detrimental to their health like fast food and sugary cereals. Viral marketing is designed to increase product sales and, therefore, consumption of unhealthy food products. Increasingly, viral marketing will be found on apps used on mobile phones and tablets, and be tied to one's location. Children simply lack the capacity to evaluate viral marketing and likely are, along with their parents, unaware that they are participating in a form of marketing. Through their use of refer-a-friend email systems, major food companies and child entertainment brands have clearly demonstrated that viral marketing is not just reserved for teens and adults. The use of viral marketing tactics to market unhealthy food products to young children deserves special scrutiny by state regulators under their state UDAP authority.

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### ENDNOTES

- <sup>1</sup> See, e.g., Robert Sprague & Mary Ellen Wells, *Regulating Online Buzz Marketing: Untangling a Web of Deceit*, 47 Am. Bus. L. J. 415 (2010); Ross D. Petty & J. Craig Andrews, *Covert Marketing Unmasked: A Legal and Regulatory Guide for Practices that Mask Marketing Messages*, 27 J. PUB. POL'Y & MARKETING 7, 9 (2008); Ellen P. Goodman, *Peer Promotions and False Advertising Law*, 58 S.C. L. REV. 683, 701 (2007).
- <sup>2</sup> Refer-a-friend citizen complaints to the FTC are available at <http://www.democraticmedia.org/refer-friend-complaints>.
- <sup>3</sup> Posting of Cecilia Kang to Post Tech, *McDonald's removes networking features in some online games*, [http://www.washingtonpost.com/blogs/post-tech/post/mcdonalds-removes-networking-features-in-some-online-games/2012/10/22/419c1f4a-1c63-11e2-ad90-ba5920e56eb3\\_blog.html](http://www.washingtonpost.com/blogs/post-tech/post/mcdonalds-removes-networking-features-in-some-online-games/2012/10/22/419c1f4a-1c63-11e2-ad90-ba5920e56eb3_blog.html) (Oct. 22, 2012, 03:08 PM ET).
- <sup>4</sup> McDonald's, *McDonald's Internet Privacy Policy* (last revised Sept. 20, 2012), <http://www.mcdonalds.com/us/en/privacy.html#children>.
- <sup>5</sup> See, e.g., Popular Media, *Media Kit: Socialize Your Way to Better ROI* (2009), [http://griffinfarley.typepad.com/files/pm\\_media\\_kit.pdf](http://griffinfarley.typepad.com/files/pm_media_kit.pdf).
- <sup>6</sup> See, e.g., Association of National Advertisers, *Marketers Leverage Newer Media Platforms to Reach Growing Number of Multicultural Consumers* (Oct. 2012), <http://www.ana.net/content/show/id/24292>.
- <sup>7</sup> Kaiser Family Foundation, *It's Child's Play: Advergaming and the Online Marketing of Food to Children 16* (July 2006), <http://www.kff.org/entmedia/upload/7536.pdf>.
- <sup>8</sup> For more information about digital marketing tactics commonly used to market foods and beverages to youth please visit [www.digitalads.org](http://www.digitalads.org).
- <sup>9</sup> See, e.g., Brian Morrissey, *Value of a 'Fan' on Social Media: \$3.60*, ADWEEK, April 19, 2010, at 28; Comscore, *The Power of Like: How Brands Reach and Influence Fans Through Social Media Marketing* (2011), [http://www.comscore.com/Insights/Presentations\\_and\\_Whitepapers/2011/The\\_Power\\_of\\_Like\\_How\\_Brands\\_Reach\\_and\\_Influence\\_Fans\\_Through\\_Social\\_Media\\_Marketing](http://www.comscore.com/Insights/Presentations_and_Whitepapers/2011/The_Power_of_Like_How_Brands_Reach_and_Influence_Fans_Through_Social_Media_Marketing).
- <sup>10</sup> John E. Hogan, Katherine N. Lemon & Barak Libai, *Quantifying the Ripple: Word-of-Mouth and Advertising Effectiveness*, 44 J. ADVERTISING RES. 271 (2004).
- <sup>11</sup> *Id.* at 273.
- <sup>12</sup> See Michael Trusov, Randolph E. Bucklin & Koen Pauwels, *MONETARY VALUE OF WORD-OF-MOUTH MARKETING IN ONLINE COMMUNITIES*, 2 GFK-MARKETING INTELLIGENCE REV. 26 (2001)(discussing the banner ad revenue value of WOM marketing).
- <sup>13</sup> Natasha Singer, *Your Attention, Bought in an Instant*, N.Y. TIMES, Nov. 18, 2012, at Pg. 1; Posting of Brandon Gutman to Market Share, *Kellogg Proves ROI Of Digital Programmatic Buying*, <http://www.forbes.com/sites/marketshare/2012/11/09/kellogg-proves-roi-of-digital-programmatic-buying/> (Nov. 9, 2012, 7:00 AM).
- <sup>14</sup> Posting of Jennifer Valentino-DeVries to Digits, *The Economics of Surveillance*, <http://blogs.wsj.com/digits/2012/09/28/the-economics-of-surveillance/> (Sept. 28, 2012, 10:30 PM).
- <sup>15</sup> Federal Trade Commission, *Deception Policy Statement*, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 177 (1984).
- <sup>16</sup> *In re Wilson Chemical Co.*, 64 F.T.C. 168, 1964 WL 72825 (1964).
- <sup>17</sup> *Id.* at \*7.
- <sup>18</sup> *Id.* at \*12.
- <sup>19</sup> *In re Complaint and Request for Investigation of McDonald's Corporation's Violation of the Children's Online Privacy Protection Act in Connection with HappyMeal.com* submitted to the Federal Trade Commission by Center for Digital Democracy, at A-5 (Aug. 22, 2012), <http://www.democraticmedia.org/sites/default/files/HappyMeal.pdf> (emphasis added).
- <sup>20</sup> *Id.* at A-6.
- <sup>21</sup> *Id.*
- <sup>22</sup> Kaiser Family Foundation, *supra* note 7.