

Packaging: Digital Marketing at the Moment of Truth

State Law Approaches to Address Digital Food Marketing to Youth

Product packaging of foods and beverages sold at food retailers like grocery and convenience stores and fast food restaurants is a prime jumping-off point for children and teens into the digital marketing world. Product packaging currently represents a major loophole in the self-regulatory framework governing the nutritional quality of foods marketed to children under 13 administered by the Children’s Food and Beverage Initiative (CFBAI) of the Council of Better Business Bureaus.¹ According to food marketing experts, “[m]arketing depends heavily on the visual communications of packaging to inform and persuade consumers both at the point of purchase and at the point of consumption.”² With respect to the power of mobile marketing at the point of purchase, one food industry executive noted that mobile devices allow food marketers to interact with the consumer “in-store, in-aisle, at the moment of truth, which we’ve never been able to do before at the moment of purchase.”³ According to the Federal Trade Commission (FTC), food “[p]ackaging often directed children to...[a] company website for advergames, activities, videos and contests.”⁴

The Types and Cost of Food Packaging

Food companies invest in packaging for food preservation and its value as a marketing medium. There are three main types of food packaging: (1) containers to hold multiple units of a particular packaged food item, (2) outer boxes or bags to be displayed on the store shelf, and (3) an interior wrapper holding multiple servings of food (e.g., the bag inside a cereal box holding the cereal) or wrappers around individual servings of food (e.g., single-serve snack wrappers). Major food and beverage companies reported to the FTC that in-store marketing and packaging targeting youth accounted for 9.3% of total youth-targeted food marketing expenditures



in 2006 and 6.3% in 2009.⁵ The United States Department of Agriculture’s Economic Research Service estimates that 4 cents of each food dollar spent in the U.S. pays for packaging, as compared to 2 cents for other advertising expenses.⁶

Digital Marketing Heightens the Need for Increased State Regulatory Oversight of Food Packaging

Marketing on food and beverage packaging is subject to the applicable consumer protection law provisions of each state where it is sold. Child-directed food packaging features typically have nothing to do with actual food characteristics or health claims so they are not governed by the federal Nutrition Labeling and Education Act. Product packaging targeting children under 13 is not covered by the CFBAI. The self-regulatory gap for food packaging is especially significant because food packaging is highly material to purchases because “it communicates to consumers at the time they are actually deciding in the store.”⁷

Traditionally, food packaging like cereal boxes, that accompany the ongoing use of a product, create multiple opportunities to communicate information to consumers and instill brand loyalty.⁸ A study of elementary school-aged children found that when asked to draw a “cereal box” they could spontaneously and from memory draw a picture of a cereal box that included a number of different attention elements including slogans, spokescharacters, and product names.⁹ The advent of digital marketing and mobile marketing in particular has converted formerly “one-time-use” wrappers like candy wrappers, yogurt tubes, paper bags and chip bags into the means

to: access exclusive content online; obtain loyalty points; obtain a code to play a game; and to obtain a code to gain access to a game or to improve the experience on a food-company website. The FTC found that packaging on food products marketed to youth “frequently promoted contests or sweepstakes, usually entered via the website with a code provided on or in the box....”¹⁰ As one food industry executive noted, “mobile is disrupting the consumer path of purchase, as well as the overall in-store experience. It presents opportunities with the ability to interact with shelf talkers or physical activation in-store, as well as product packaging.”¹¹

Food Packaging from the Perspective of the Target Audience of Young Consumers

Marketing is to be viewed from the perspective of the target audience. A young consumer will be drawn in by bright colors, a familiar spokescharacter or licensed character, a tie-in with a popular television program or movie, a toy premium or a code, or a game on the box—features that have nothing to do with the actual food product contained inside the packaging. From the perspective of young consumers, “[i]n a real sense, the packaging has become the product.”¹² This is problematic because packaging features are used to drive purchases and consumption of unhealthy foods and beverages.

Adults interpret and interact with product packaging differently than children. Parents are likely motivated to purchase a particular brand because their child asked for it, it is perceived to be of good quality, a good value, and it is appropriate for children. Marketers capitalize on these differences by including marketing messages on packaging that appeal to both parents and children (Table 1). A number of these features are described and analyzed in other sections of this report.

Table 1. Food packaging features and the likely target audience

Packaging Features¹³	Youth-Focused	Parent-Focused
Colors	X	
Spokescharacters (e.g., Keebler Elves)	X	
Cross-Promotions (television shows and movies)	X	
Size and Shape	X	X
Brand Name	X	X
Product Name	X	X
Sweepstakes	X	X
Toy Premiums	X	
Codes to Use on a Website or with an App	X	
Interactive features (requiring the use of a mobile phone)	X	
Nutrition Facts Panel	X	
Nutrition-Related Claims	X	X
Points for use with a loyalty program	X	X
Public Relations Features (cause-marketing campaigns)	X	X
Instant Win Games	X	X

A Regulatory Focus on Food Packaging Can Have a Meaningful Impact on Digital Food Marketing

Packaging directly relates to digital marketing because it is used to make young consumers aware of tie-ins and promotions to be accessed online or via mobile devices. Food packaging is currently unaddressed by self-regulatory guidelines governing the nutritional

content of foods marketed to children and is highly material to actual product purchases. The majority of the packaging features described above have nothing to do with the actual food or beverage product being sold. These packaging features exploit the vulnerabilities of children and teens in order to drive sales of unhealthy food products. A regulatory focus on packaging features could go a long way towards leveling the playing field for parents and young consumers in the retail environment and to reduce exposure to digital food marketing.

Endnotes

¹Children's Food and Beverage Advertising Initiative, Council of Better Business Bureaus, Inc., *Children's Food and Beverage Advertising Initiative and Core Principles Statement* (Sept. 2010), <http://www.bbb.org/us/storage/0/Shared%20Documents/Enhanced%20Core%20Principles%20Third%20Edition%20-%20Letterhead.pdf>.

²James U. McNeal & Mindy F. Ji, *Children's Visual Memory of Packaging*, 20 J. CONSUMER MARKETING 400, 403 (2003).

³Atifa Silk, *Mobile Believer: Modelez's Bonin Bough*, CAMPAIGN ASIA-PACIFIC (May 6, 2013).

⁴FED. TRADE COMM'N, *A Review of Food Marketing to Children and Adolescents* 1, 74 (December 2012), <http://www.ftc.gov/os/2012/12/121221foodmarketingreport.pdf>.

⁵Lisa M. Powell et al., *Food Marketing Expenditures Aimed at Youth: Putting the Numbers in Context*, __ AM. J. PREVENTATIVE MED. 3 (2013), available at http://www.yaleruddcenter.org/resources/upload/docs/what/advertising/Food_Marketing_Expenditures_AJPM_8.13.pdf.

⁶Patrick Canning, *A Revised and Expanded Food Dollar Series: A Better Understanding of Our Food Costs* 1, 20-21 (Feb. 2011), <http://www.ers.usda.gov/publications/err-economic-research-report/err114.aspx#.UjHTGMaa4ZQ>.

⁷Corinna Hawkes, *Food Packaging: the Medium is the Message*, 13 PUB. HEALTH NUTRITION 297, 297 (2010).

⁸James U. McNeal & Mindy F. Ji, *Children's Visual Memory of Packaging*, 20 J. CONSUMER MKTG. 400, 403 (2003).

⁹*Id.* at 400.

¹⁰FED. TRADE COMM'N, *A Review of Food Marketing to Children and Adolescents* 75 (December 2012), <http://www.ftc.gov/os/2012/12/121221foodmarketingreport.pdf>.

¹¹Atifa Silk, *Mobile Believer: Modelez's Bonin Bough*, CAMPAIGN ASIA-PACIFIC (May 6, 2013).

¹²Corinna Hawkes, *Food Packaging: the Medium is the Message*, 13 PUB. HEALTH NUTRITION 298 (2010).

¹³*Id.* at 297; James U. McNeal & Mindy F. Ji, *Children's Visual Memory of Packaging*, 20 J. CONSUMER MKTG. 400 (2003).