Improving the Nutritional Quality of Restaurant Children’s Meals

with

• Kate Klimczak, MPP, Nutrition Policy Associate, Center for Science in the Public Interest

• Amy Ackerman, JD, National Policy and Legal Analysis Network to Prevent Childhood Obesity, a project of ChangeLab Solutions

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Kids eating out

• Eating out provides 1/3 of children's calories
  – 2x times as much as in the 1970’s
• Limited healthy choices on children’s menus
• Studies link eating out with obesity and higher caloric intakes
  – Children eat almost twice as many calories from a restaurant meal than typical meal from home
Unhealthy Children’s Menus

The vast majority of kids’ meals contain calorie-dense, nutritionally-poor foods as the default option. In one study, we found:

• 93 percent of children’s meals are high in calories;
• 86 percent are high in sodium; and
• 45 percent are high in saturated fat.
Food Marketing is Effective

• Studies show marketing gets children’s attention & affects food choices, food preferences, purchase requests, diets & health
  – Watching TV linked to obesity

• Kids misled by and don’t understand advertising

• Companies know marketing works: $2 billion/year

• Parents know marketing works
Youth Marketing Expenditures, including Toys
Total Expenditures: $2 Billion per year
(in Millions of Dollars)

- Internet, Email, Texting, Word of Mouth: 4% ($77)
- Television: 38% ($745)
- Premiums (including fast-food toys): 22% ($427)
- Packaging/In Store Displays: 10% ($195)
- In-School: 9% ($186)
- Other Promotions (sponsorships, move ads, product placement, cross promotions): 12% ($241)
- Other Measured Media (radio, magazines): 5% ($108)
**Self-Regulation**

Children’s Food and Beverage Advertising Initiative

**Current participants include:**

<table>
<thead>
<tr>
<th>Company</th>
<th>Company</th>
</tr>
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<tbody>
<tr>
<td>Burger King</td>
<td>Mars</td>
</tr>
<tr>
<td>Campbell Soup Company</td>
<td>McDonald's USA</td>
</tr>
<tr>
<td>Coca-Cola Company</td>
<td>Nestlé USA</td>
</tr>
<tr>
<td>ConAgra Foods</td>
<td>PepsiCo</td>
</tr>
<tr>
<td>Dannon</td>
<td>Post Foods</td>
</tr>
<tr>
<td>General Mills</td>
<td>Hillshire Brands</td>
</tr>
<tr>
<td>Hershey</td>
<td>Unilever United</td>
</tr>
<tr>
<td>Kellogg</td>
<td>States</td>
</tr>
<tr>
<td>Kraft Foods</td>
<td></td>
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</tbody>
</table>
MIA from CBBB Initiative

- Chuck E. Cheese's
- Subway
- Air Heads
- IHOP
- Pizza Hut
- McCain
- KFC
- Original Bottle Pop
Litigation has been successfully used to force or encourage companies to address the nutritional quality of their menus. For example:

- 1986 negotiated settlement between state attorneys general and fast food restaurants on nutrition and ingredient information
- 2009 class action lawsuit to require Denny’s to disclose sodium levels in its meals
- 2010 CSPI lawsuit to stop McDonald’s from using toys to promote Happy Meals
Some Progress

• Jack in the Box
  – Discontinued providing toys with kids’ meals in June 2011

• McDonald’s
  – In 2011, changed its Happy Meal to automatically include both apple slices and French fries

• Kids Live Well
State & Local Policy Options

- Disassociating toys and other rewards from unhealthy foods is a combined responsibility that should involve states, localities, and restaurants, as well as parents.

- State and local policymakers can pass ordinances implementing nutrition standards for children’s meals that can be sold with toys:
  - Municipalities generally have the authority to regulate commercial products and practices to protect the public’s health, safety, and general welfare.
  - Addressing restaurant children’s meals is a basic exercise of this authority.
Setting nutrition standards for children’s meals with toys supports healthy choices for children by:

- Encouraging restaurants to provide healthier options on children’s menus;

- Restricting the marketing of high-calorie, low-nutrition foods to children;

- Preventing companies from undermining parents’ efforts to feed children healthfully; and

- Supporting parents in choosing healthy meals and snacks for their kids.
Healthier Children’s Meals at Restaurants

Presented by
Amy Ackerman, J.D.
Consulting Attorney
Model Ordinance for Healthier Toy Giveaway Meals

Developed by the National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN)
3 POTENTIAL LEGAL ISSUES

First Amendment

Police Power Authority

Preemption
The government

“shall make no law . . .

abridging the freedom

of speech”
HOW LAWYERS THINK ABOUT MARKETING

COMMERCIAL SPEECH

Marketing to Children

OTHER MARKETING PRACTICES

Marketing to Children
These FAQs break down in plain language what the First Amendment has to do with government action on food marketing to children.

Q. **Food and media companies say the First Amendment doesn't allow the government to regulate junk food advertising to kids. Is that true?**

A. No. The First Amendment forbids some kinds of advertising regulation, but the government has leeway to restrict advertising to children, especially younger children. The FAQs below explain why and how the First Amendment applies to advertising. They also describe a number of ways federal, state, and local policymakers can avoid First Amendment problems while improving the food marketing environment surrounding kids.

Q. **Why does the First Amendment protect advertising?**

A. The First Amendment forbids government from making a law “abridging the freedom of speech.” This means that the

- **rational basis** review, which is an easy test that usually results in the regulation being upheld;
- **strict scrutiny**, which is the hardest test and almost always means a regulation will be struck down; or
- **intermediate scrutiny**, which is tougher than rational basis review but more lenient than strict scrutiny.

Most advertising regulations are subject to some form of intermediate scrutiny.

*For more PHLP resources on this topic, see: The New First Amendment and Its Implications for Combating Obesity Through Regulation of Advertising.*

Q. **How hard is it for a commercial speech regulation to pass intermediate scrutiny?**

A. In 1980, the Supreme Court established the four-part Central Hudson test—named for the case in which the test was first used. Central Hudson started out as a true
3 LEGAL CONCEPTS

- First Amendment
- Police Power Authority
- Preemption
STATES DELEGATE AUTHORITY TO LOCAL GOVERNMENTS
3 LEGAL CONCEPTS

- First Amendment
- Police Power Authority
- Preemption
Preemption is the restriction or invalidation of state and/or local laws by a higher level of government.
TOYS WITH KIDS’ MEALS

Map showing states with kids' meals offering toys: AZ, OH, FL.
The regulation and use of consumer incentive items from retail food establishments are of statewide concern.

The regulation of consumer incentive items pursuant to this article and their use, including their use in retail food establishment marketing, are not subject to further regulation by a county, city, town or other political subdivision of this state.
Fundamentals of Preemption

Preemption is a powerful tool with sweeping consequences for public health. This fact sheet explains what the legal concept of preemption means and how to spot it in a proposed law, so that advocates can participate fully in policy discussions when preemption is on the table.

What Is Preemption?

Preemption is a legal concept where a higher level of government has the authority to limit, or even eliminate, the power of a lower level of government to regulate a certain issue. This means that if a state or local law conflicts with a federal law, the federal law trumps the lower-level law. Similarly, if a city council, local board of health, or other local government entity passes a law that conflicts with a state law, the state law generally prevails.

For example, imagine that a state has a law requiring motorcycle riders to wear helmets. Could a town in that state pass an ordinance that prohibits the wearing of motorcycle helmets? Theoretically it could, but the ordinance would not be enforceable because motorcyclists would not be able to comply with both laws at the same time. The state law would prevail over, or preempt, the local law. But what if the town passed a law requiring motorcyclists to wear not only helmets, but also specially constructed leather jackets to protect their spines in case of an accident? Would this law be preempted by the state law? The answer likely depends on at least two things: 1) whether the state law includes a preemption clause, and if so, how this clause is worded, and/or 2) how a court interprets the state law.
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Restaurant and Customer Response to the 2010 Santa Clara and San Francisco County Toy Ordinances

Presented by:
Jennifer Otten, PhD, RD
November 13, 2012

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To Capture Impacts We Used . . .

- Objective Children’s Menu Assessments and direct observation to assess restaurant responses &

- Field surveys to measure customer responses

.....before & after legislation

Funded by The Obesity Society ECRG (PI: Otten) and RWJF HER grant #68301 (PI: King)
Children’s Menu Assessment Score* before & after Ordinance, Santa Clara County

*Presence of healthy choices, nutritional guidance; less toy ads/marketing

### Burger King

<table>
<thead>
<tr>
<th>Meal Type</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hamburger</td>
<td>$2.89</td>
</tr>
<tr>
<td>Cheeseburger</td>
<td>$3.09</td>
</tr>
<tr>
<td>Double Cheeseburger</td>
<td>$4.09</td>
</tr>
<tr>
<td>Chicken Tenders, 4 pc.</td>
<td>$3.49</td>
</tr>
<tr>
<td>Chicken Tenders, 6 pc.*</td>
<td>$4.39</td>
</tr>
</tbody>
</table>

**BK Kids Meal**

**Pre-policy**

- **BK Kids Meal**
  - Choose your favorite entree, side, and drink!
  - **One toy in every kids meal!**

**BK Positive Steps Kids Meals**

- **Breakfast Muffin Sandwich Meal**
  - Includes Small Hash Browns and Minute Maid® Apple Juice
  - **Fat Free Milk**
  - **Fat Free Milk with 4 pc. chicken tenders**
  - **Fat Free Milk with 6 pc. chicken tenders**

**Toy**

- **BK Kids Breakfast Meal**
  - Includes Small Hash Browns and Minute Maid® Apple Juice
  - Available during breakfast hours only

**Drink**

- **Fat Free Milk**
- **Fat Free Milk with 4 pc. chicken tenders**
- **Fat Free Milk with 6 pc. chicken tenders**

**4-month Post**
4 months Post-Legislation

PARENTS:
BK® KIDS MEAL NOTICE

We apologize for any inconvenience, but as required by the Santa Clara County Ordinance Code, we can include a toy only with a BK POSITIVE STEPS™ Kids Meal. See our menu for a complete list.

Pedimos disculpas por cualquier inconveniencia, pero como lo requiere el Código de Ordenanza del Condado de Santa Clara, sólo podemos incluir un juguete con un BK POSITIVE STEPS™ Kids Meal. Consulta nuestro menú para una lista completa.
Restaurant Response, Santa Clara County

- **Conclusion:** Policy Appeared to have Positive Impact on Food Environments in Santa Clara County
- **Next steps:** Take a closer look at customer response
San Francisco Restaurant Response:
Both BK/McD charged 10 cents to add a toy

- No meals met nutrition criteria at any time point
Maybe that boxplot you already made would be fine to show of kids and say we didn’t see any significant changes in nutrition profile of purchases.
**PRE1 vs. PRE2, Mann Whitney U, p=0.02**

**PRE2 vs. POST, Mann Whitney U, p=0.08**

**PRE1 vs. POST, Mann Whitney U, p<.001**

Calories per Order by Time Point, for Children Ordering a Kid’s Meal (N=351), San Francisco McDonald’s and Burger Kings (N=29)
Restaurant Observations: McD (9/2011)

1. New side
   ○ From default fries → default apples/reduced-size fries, removed caramel sauce

<table>
<thead>
<tr>
<th>Happy Meal with 2.4 oz. fries</th>
<th>Happy Meal with apple slices and 1.1 oz. fries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calories: 520</td>
<td>Calories: 410</td>
</tr>
<tr>
<td>Total Fat: 23g (35%)</td>
<td>Total Fat: 17g (26%)</td>
</tr>
<tr>
<td>Sodium: 570mg (24%)</td>
<td>Sodium: 440mg (18%)</td>
</tr>
</tbody>
</table>

2. New drink
   ○ From 1% choc milk → FF chocolate milk (170 vs. 130 kcal)
Thank you!

- Contact information: jotten@stanford.edu
- Funding: RWJF HER Rapid Response Grant #68301 (PI: King)
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  - **Statisticians**: Ben Goldstein, Kristopher Kappahahn, Jessica Kubo

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FOR MORE INFORMATION ON FOOD MARKETING TO CHILDREN, PLEASE VISIT:

FOODMARKETING.ORG

For a model local ordinance, please visit:

http://changelabsolutions.org/publications/healthier-toy-giveaway-meals

If you have additional questions or are interested in working on this issue in your state or locality, please contact Kate Klimczak at:

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