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Sumner M. Redstone
Chairman and Chief Executive Officer
Viacom Inc.
Viacom International Inc.
1515 Broadway
New York, NY 10036

James M. Jenness
Chairman and Chief Executive Officer
Kellogg Company
1 Kellogg Square
Battle Creek, MI 49016-3599

Re: *Center for Science in the Public Interest; Sherri Carlson, individually and on behalf of others similarly situated and as next friend of Paige Carlson; Andrew Leong, individually and on behalf of others similarly situated and as next friend of Miles Leong; and Campaign for a Commercial-Free Childhood, Plaintiffs, v. Viacom Inc., Viacom International Inc., and Kellogg Company, Defendants*

Dear Messrs. Redstone and Jenness:

This office represents the Center for Science in the Public Interest ("CSPI"), Sherri Carlson, Paige Carlson, Andrew Leong, Miles Leong, and the Campaign for a Commercial-Free Childhood ("CCFC") ("Plaintiffs") who intend to file a lawsuit alleging that Viacom Inc., Viacom International, Inc., and Kellogg Company ("the Companies") engage in acts and practices in the Commonwealth of Massachusetts that are both unfair and deceptive with respect to the marketing and sale of foods of poor nutritional quality to children under 8 years old, in violation of Massachusetts G.L. c. 93A.

Plaintiffs sue for themselves, as next friend for their children under 8, and on behalf of a class of Massachusetts residents who are parents or guardians of children under 8 in Massachusetts who have (1) seen an advertisement¹ for a

¹ "Advertisement" and "advertise" include all forms of marketing in all forms of media and venues, including without limitation print advertisements, television and radio commercials, product labels, magazines, use of licensed characters, use of celebrities, viral marketing, websites,



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nutritionally poor food on Nickelodeon or in another Viacom medium, (2) seen an advertisement for a nutritionally poor Kellogg product during children's programming in any other media, or (3) seen or purchased a nutritionally poor Kellogg or other product emblazoned with a Nickelodeon character (herein, the "Class").

Plaintiffs primarily seek an injunction ordering that no food of poor nutritional quality or product line or brand for which more than 50% of the food products are of poor nutritional quality² may be:

- Advertised on Nickelodeon (1) directly before, during, or directly after any Nick Jr. programming; or (2) directly before, during, or directly after any other programming where 15% or more of the audience is under age 8.
- Marketed to children under 8 (1) directly before, during, or directly after programming where 15% or more of the audience is under 8; (2) in any magazine where 15% or more of the audience is under 8; (3) in any movie with a G or PG rating; or (4) on any website where 15% or more of the audience is under 8.
- Marketed to children under 8 through any other form of advertising.

Plaintiffs also seek payment of \$25 per violation as statutory damages, plus attorneys' fees. The precise amount of damages cannot be calculated without access to the Companies' marketing, sales, and demographic data, and

contests, premiums, incentives, toys and other merchandise, games, advergames, sponsorships, school-based marketing (such as book covers and sponsored educational material), and kids clubs.

² Foods of poor nutritional quality are foods with (1) more than 35% of calories from total fat, excluding nuts, seeds, and peanut or other nut butters; or (2) more than 10% of calories from saturated plus trans fats; or (3) more than 35% added sugars by weight; or (4) more than 230 mg of sodium per serving of snack items, more than 480 mg sodium per serving of other individual foods, more than 600 mg sodium for main dish items, and more than 770 mg of sodium for meals. In addition, foods of poor nutritional quality do not contain one or more of the following (a) 10% of the Daily Value (DV) of vitamins A or C, calcium, iron, or fiber, (b) half a serving of fruit or vegetable, or (c) 51% or more (by weight) whole grain ingredients.

Beverages of poor nutritional quality include all regular or diet soft drinks; sports drinks; sugar-sweetened or diet iced teas; fruit-based drinks that contain less than 50% real juice or that contain added sweeteners; high-fat milks (whole and 2%); and beverages containing caffeine, excluding low-fat or fat-free chocolate milk (which contain trivial amounts of caffeine). A food also is considered of poor nutritional quality if (1) for an individual item (except for fruits and vegetables), it is shown in a portion size larger than the standard serving size used for Nutrition Facts labels or (2) for a meal, if it contains more than one-third of the daily calorie requirement for the average child in the age range targeted by the marketing (which is 500 calories for moderately active 4- to 8-year olds).

These standards were adapted from those developed by the National Alliance for Nutrition and Activity, a coalition of more than 300 health, nutrition, and other organizations, as well as from CSPI's *Guidelines for Responsible Food Marketing to Children*, which were developed with advice from and review by leading nutritional experts. In January 2005, CSPI provided very similar nutrition standards to both Viacom and Kellogg.

thus the total amount will have to be set after access to the Companies' records, but it is likely more than \$1 billion for each defendant.

The rest of this letter describes the claims the Plaintiffs have against the Companies and demands settlement prior to the institution of litigation. This demand letter is intended to assist in your assessment of the Plaintiffs' claims by: (1) providing the factual basis for these claims; (2) discussing the Companies' legal liability; (3) providing background information on each of the Plaintiffs; (4) describing the specific injuries suffered by the Plaintiffs; (5) enumerating the damages to which the Plaintiffs are entitled; and (6) making a demand for settlement.

1. Facts Giving Rise to Liability

Marketing of foods of poor nutritional quality to children in the United States is pervasive. Children under 8 are highly vulnerable to messages that persuade them to prefer — and pester their parents to buy — foods of poor nutritional quality. Given the vulnerability of children, their poor diets, and increasing rates of childhood obesity, companies should not market to kids foods that can undermine their diets and health.

Consumption of unhealthy foods that are high in calories, fat, and sugar often replaces consumption of healthier foods and beverages such as low-fat milk, fruit juice, fruits, and vegetables. Only 2% of children (2 to 19 years) eat a healthy diet consistent with the main dietary recommendations of the U.S. Department of Agriculture.³ Three out of four children consume more saturated fat than is recommended in the *Dietary Guidelines for Americans*.⁴ In addition, today children (ages 6 to 18) drink twice as much carbonated soda than they did 30 years ago,⁵ and they eat out about twice as often.⁶

The last thing children need is more encouragement — through food marketing — to eat calorie-dense, nutritionally poor foods.

Children may not need more encouragement to eat foods of poor nutritional quality, but they get it. Each year, companies spend an estimated \$10 billion on food and beverage marketing to children and youth.⁷ Foods of poor nutritional quality are marketed to children in many ways. Television is one

³ Munoz K, Krebs-Smith S, Ballard-Barbash R, Cleveland L. "Food Intakes of U.S. Children and Adolescents Compared with Recommendations." *Pediatrics* 1997, vol. 100, pp. 323-329.

⁴ Agricultural Research Service, U.S. Department of Agriculture. *Food and Nutrient Intakes by Children 1994-96, 1998 (1999)*. Table Set 17. Accessed at <<http://www.barc.usda.gov/bhnrc/foodsurvey/home.htm>> on August 17, 2001.

⁵ U.S. Department of Agriculture, Office of Analysis, Nutrition and Evaluation. *Changes in Children's Diets: 1989-1991 to 1994-1996*. Washington, D.C., January 2001. Report No. CN-01-CD1.

⁶ Lin BH, Guthrie J, Frazao E. "American Children's Diets Not Making the Grade." *Food Review* 2001, vol. 24, pp. 8-17.

⁷ Institute of Medicine. *Food Marketing to Children: Threat or Opportunity?* Washington, D.C.: National Academies Press (2006) (herein, "IOM Report").

popular advertising medium for the food, beverage, and candy industries.⁸ In contrast, companies that market fruits, vegetables, beans, whole grains, and other healthful foods — that is, the very foods that children *should* be eating and encouraged to eat — have not had significant resources to advertise directly to young children, either on television or in other ways.

Food (and other) marketing is often highly appealing and often not recognized by young children as advertising. Ads directed to children feature fun and adventure, are often colorful and musical, and include well-loved “spokes-characters.” There are also product placements that incorporate the product into the theme or plot of stories, books, movies, Internet sites, or video games so that children may not even realize that a junk food product is being marketed.

Young children spend considerable time watching television and using other media, resulting in high exposure to food marketing. Despite (or because of) current Federal Communication Commission (FCC) regulation of the allowable number of commercial minutes per hour on children’s television programming (12 minutes/hour on weekdays and 10.5 minutes/hour on weekends), children see a lot of commercials. Depending on the time of day, day of the week, and channel, anywhere from 11 to 17 minutes of commercial minutes are shown per hour of television (this number exceeds the FCC limits because some of the shows that are popular with children are not defined by the FCC as “children’s” programming).⁹ In addition, the use of licensed characters in ads, on food packaging, and elsewhere are popular marketing techniques, which means that the shows in which those characters appear are basically program-length commercials for the products that bear images of the licensed characters. Overall, about half of all commercials during children’s programming are for foods of poor nutritional quality (though the exact percentage varies with time of year, channel, and program).¹⁰ “The diet presented on Saturday morning television is the antithesis of what is recommended for healthful eating for children.”¹¹

According to a recent report by the National Academies’ Institute of Medicine (IOM), food and beverage marketing adversely affects young Americans’ diets and health. The IOM, which undertook the most comprehensive review to date of the influence of food marketing on children, found that the “prevailing pattern of food and beverage marketing to children in

⁸ *Advertising Age*, “50th Annual 100 Leading National Advertisers”. June 27, 2005. Accessed at <http://www.adage.com/images/random/lna2005.pdf> on November 22, 2005.

⁹ Television Commercial Monitoring Reports, 2001, American Association of Advertising Agencies (AAAA) and Association of National Advertisers (ANA). Found in: Rideout V. *Preventing Childhood Obesity: The Role of Food Marketing*, Presentation to the Institute of Medicine, January 27, 2005.

¹⁰ Gamble M, Cotugna N. “A Quarter Century of TV Food Advertising Targeted at Children.” *American Journal of Health Behavior* 1999, vol.23, pp. 261-267.

¹¹ Kotz K, Story M. “Food Advertisements During Children’s Saturday Morning Television Programming: Are They Consistent with Dietary Recommendations?” *Journal of the American Dietetic Association* 1994, vol.94, pp.1296-1300.

America represents ... a direct threat to the health of the next generation." The IOM report also found that television food and beverage advertising influences consumption and is a contributor to less healthful diets.¹²

While Plaintiffs are also concerned about food marketing to children older than 8, studies show that children under 8 do not understand the persuasive intent of commercials and, as such, are particularly vulnerable to those messages.¹³ The Institute of Medicine supports this assertion and also found that children as old as 11 years may not activate their defenses against advertising unless explicitly cued to do so.¹⁴ This lack of understanding makes young children more vulnerable to marketing of foods of poor nutritional quality.

There is no disputing the fact that the goal of food marketing to kids is to increase sales of the marketed product. Companies and advertisers certainly believe such marketing is effective or they would not invest so heavily in it.

Companies market to young children because of their future purchasing power and current influence. Familiarizing young children with brand names is highly important to marketers.

Children have purchasing power. Together, children and youth in the U.S. spend about \$200 billion each year.¹⁵ They spend about one-third of their money on foods and beverages.¹⁶

In addition, children influence family food purchases. Eighty-four percent of children (ages 8 to 12) surveyed in a 2003 Harris Interactive poll reported that they influence their parents' grocery store purchases.¹⁷ Clearly, younger children do, too.

Not every marketer has chosen to take advantage of young children by marketing foods of poor nutritional quality. For example, Kraft Foods has decided that it should not advertise foods of poor nutritional quality to kids. As Kraft describes its policy, it will "shift the mix of products it advertises in television, radio and print media viewed primarily by children ages 6-11, such as many popular cartoon programs, toward products that qualify for the [Sensible Solutions] flag, and phase out advertising in these media for products that don't. This means that, over the course of 2005, a number of well-known Kraft products — including regular *Kool-Aid* beverages, *Oreo* and *Chips Ahoy!* cookies, several *Post* children's cereals, and many varieties of *Lunchables* lunch combinations —

¹² IOM Report

¹³ Kunkel D, et al. *Report on the APA Task Force on Advertising and Children*. Washington, D.C.: American Psychological Association (2004).

¹⁴ IOM Report.

¹⁵ IOM Report.

¹⁶ McNeal JU. "Tapping the Three Kids' Markets." *American Demographics*, April 1998, p. 36 (accessed on LexisNexis).

¹⁷ Harris Interactive Poll. *Kid-Fluence and Pester Power*. Accessed at http://www.harrisinteractive.com/news/newsletters/k12news/HI_trends&tudesnews2003_v2_iss8.pdf on November 15, 2005.

will no longer be advertised in these media."¹⁸ Kraft adopted that policy in January 2005, in addition to its *existing policy of not advertising at all in media where the majority of the audience is under age six.*

2. Liability of the Companies

Viacom

As Viacom itself has stated, "Nickelodeon programming consists primarily of originally produced programs appealing to audiences ages 2 to 11, which includes Nick Jr, a program block designed for 2 to 5 year olds."¹⁹

CSPI reviewed Nickelodeon advertising in September-October 2005 and found that Viacom markets foods of poor nutritional quality to children under 8 in a variety of ways, including commercials during Nickelodeon programming, print ads in *Nickelodeon* magazine, on food packages, and through licensing agreements with food manufacturers and restaurants. The vast majority (about 88%) of food advertisements on the Nickelodeon channel were for foods of poor nutritional quality and 100% of print advertisements in *Nickelodeon* magazine were for foods of poor nutritional quality. Of the food products with Nickelodeon characters on their packaging, 60% were of poor nutritional quality, including Fairly Odd Parents on Kit Kat candy bars, Twizzler candies, and Cheese Nips; and Dora the Explorer and Jimmy Neutron on super salty Campbell's soup. Viacom also has had licensing agreements for Nickelodeon characters for children's meals with fast-food chains including Burger King and McDonald's.

Nickelodeon's most popular cartoon, SpongeBob SquarePants, brought in \$1.5 billion in licensing revenues in 2003 alone, according to *Forbes* magazine.²⁰ SpongeBob appears on boxes of a wide variety of packaged foods, including many Kellogg products such as Rice Krispies treats, Pop-Tarts, Cheez-Its, an eponymous cereal, and E. L. Fudge cookies. SpongeBob also has been featured in Eggo waffle ads (another Kellogg product). All of those products are of poor nutritional quality.

Kellogg

In addition to its many uses of SpongeBob and other Nickelodeon characters on its packaging, Kellogg is a frequent advertiser on Nickelodeon and many other electronic and other media seen by young children.

CSPI reviewed Kellogg marketing practices in May-June 2005 and in September-October 2005, and found that almost none of Kellogg's marketing efforts aimed at children was for nutritionally sound foods.

¹⁸ www.kraft.com/newsroom/01122005.html

¹⁹ Viacom Inc. Annual Report to the Securities and Exchange Commission at page I-3 (Form 10-K, filed in March 2005).

²⁰ www.forbes.com/lists/2004/10/20/cz_vq_lr_1020fictionalintro.html.

Television. Out of 27.5 hours of Saturday morning television CSPI examined, a total of 54 commercials were for Kellogg's products. 98% of those spots were for foods of poor nutritional quality.

Packaging. Almost all (84%) of Kellogg's foods that include on-package marketing aimed at children were nutritionally poor foods.

Websites. CSPI found a total of 21 Kellogg websites that appear to be aimed at or would be used by children, including those under 8. All of the sites promoted foods of poor nutritional quality.

Branded non-food products. Out of 75 child-oriented branded items Kellogg offered for sale on the web, 82% had a logo or mascot associated with a food of poor nutritional quality from Kellogg.

3. Profiles of Plaintiffs

The Center for Science in the Public Interest is a non-profit organization based in Washington, D.C., with approximately 900,000 members and subscribers in the United States and Canada who receive its *Nutrition Action Healthletter*. CSPI has worked to improve the nation's health through better nutrition and safer food since 1971. CSPI sues on behalf of its Massachusetts members and subscribers who are injured by the Companies' practices and, because its efforts have been injured by the Companies' actions, on its own behalf.

Sherri Carlson is a parent in Wakefield, Massachusetts. She has three children aged 4, 8, and 11. Both she and her four-year-old daughter Paige have been injured by the Companies' practices. She sues on behalf of herself, as next friend on behalf of Paige, and on behalf of all other Class members.

Andrew Leong is a parent in Brookline, Massachusetts. He has one son, Miles, age six. Both he and his son have been injured by the Companies' practices. He sues on behalf of himself, as next friend on behalf of Miles, and on behalf of all other Class members.

The Campaign for a Commercial-Free Childhood is a national coalition of health care professionals, educators, advocacy groups and parents concerned about predatory marketing that targets children. CCFC supports the rights of children to grow up – and the rights of parents to raise them – without being undermined by commercial interests. Through public education, legislative advocacy and grass roots interventions, CCFC counters advertising and marketing that is pervasive, unfair, deceptive and harmful to children. Headquartered at Judge Baker Children's Center in Boston, CCFC is the only national coalition working to limit the negative impact of commercialism on children. CCFC sues on behalf of its Massachusetts members who are injured by the Companies' practices and, because its efforts have been injured by the Companies' actions, on its own behalf.

4. Injury

As detailed above, many of the commercials that Viacom airs for food products, much of the food products promoted by Viacom-licensed characters, and much of Kellogg's marketing efforts (both on Nickelodeon and through other media) are directed at children under 8 years old — the most vulnerable market in the country, who are intrinsically deceived and abused by encouragement to eat unhealthy junk foods.

For purposes of this demand and for the lawsuit, each individual plaintiff and each member of the Class was injured in a similar fashion. The methods, acts, and practices of the Companies described above, both jointly and separately, injured all individual plaintiffs and all Class members in a similar manner.

The injury occurs each time a child is subjected to each marketing effort for a food of poor nutritional quality. It continues each time a parent purchases one of these items. Each event is a separate injury. *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381, 813 N.E.2d 476 (Mass. 2004).

The injury is to both parent and child. Parents are injured because these marketing efforts interfere with their efforts to instill good eating habits in their children, provide healthy food for their children at an important developmental stage, and safeguard their children's health.

Children are injured both long-term and short-term. In the long term, these marketing messages — delivered via the television screen, Internet, magazine, package, and other advertisements — negate the efforts of the parent and instead imprint children with a desire to eat foods and beverages that undermine their diet and health. In the short term, these messages urge the child to eat a diet that is unbalanced, with nutritionally poor food replacing healthy food.

Such a diet — high in added sugars, unhealthful fats, refined flour, and sodium; and deficient in dietary fiber and key nutrients obtained from *healthful* foods, such as fruits, vegetables, and whole grains, as recommended by the U.S. government's *Dietary Guidelines for Americans* — contributes to poor health characterized by obesity, heart disease, diabetes, cancer, dental caries, and other illnesses.

Because the Companies' use and employment of the unfair and deceptive acts and practices described above have caused similar injury to numerous other persons similarly situated, Plaintiffs make this demand on behalf of all other persons so injured.

5. Damages

Plaintiffs are entitled, at a minimum, to the statutory damage of \$25 for each act or practice by either Company that is unfair, deceptive, or unlawful. Massachusetts G.L. c. 93A, Section 9(3).

A violation of c. 93A occurs each time (1) a child in Massachusetts under 8 sees an advertisement for a nutritionally poor food on Nickelodeon or in another

Viacom medium, sees an advertisement for a nutritionally poor Kellogg product during children's programming in any other media, or sees a Kellogg or other product emblazoned with a Nickelodeon character; and (2) each time the parent of a child in Massachusetts under 8 purchases a nutritionally poor Kellogg food product. Therefore, for purposes of calculating damages it is necessary to determine how many times per year each happens.

As stated at the outset of this letter, the precise amount of damages cannot be calculated without access to the Companies' marketing, sales, and demographic data, but for purposes of this demand, plaintiffs have estimated damages under Massachusetts G.L. c. 93A in excess of \$250 million per year as to Viacom and an additional \$250 million per year as to the Kellogg Company. Because c. 93A provides a four-year statute of limitations, each of these amounts must be quadrupled, to \$1 billion as to Viacom and an additional \$1 billion as to the Kellogg Company. In addition, plaintiffs are entitled to an award of attorneys' fees.

6. Settlement Demand

In light of the foregoing, Plaintiffs demand the following forms of relief:

- Entry of a permanent injunction as to Viacom providing that no food of poor nutritional quality or product line or brand for which more than 50% of the products are of poor nutritional quality is advertised on Nickelodeon (1) directly before, during, or directly after any Nick Jr. programming; and (2) directly before, during, or directly after programming where 15% or more of the audience is under 8.
- Entry of a permanent injunction as to Viacom providing that no Viacom-licensed character from a program where 15% or more of the audience is under 8 is used to advertise a food of poor nutritional quality or a product line or brand for which more than 50% of the products are of poor nutritional quality (1) directly before, during, or directly after any programming where 15% or more of the audience is under 8; (2) in any magazine where 15% or more of the audience is under 8; (3) in any movie with a G or PG rating; or (4) on any website where 15% or more of the audience is under 8.
- Entry of a permanent injunction as to Kellogg providing that no food of poor nutritional quality or product line or brand for which more than 50% of the products are of poor nutritional quality is advertised (1) directly before, during, or directly after any programming where 15% or more of the audience is under 8; (2) in any magazine where 15% or more of the audience is under 8; (3) in any movie with a G or PG rating; or (4) on any website where 15% or more of the audience is under 8.
- Entry of a permanent injunction as to Viacom and Kellogg providing that no food of poor nutritional quality or product line or brand for which more than 50% of the products are of poor nutritional quality is marketed to children under 8 through any other form of advertisement.

- Payment of \$1 billion by Viacom and \$1 billion by Kellogg in settlement of all claims for damages against the Companies by plaintiffs and Class members.
- Payment of \$10,000 as Plaintiffs' attorneys' fees.

This offer of settlement will remain open for 30 days from your receipt of this letter, after which it shall be automatically withdrawn and become null and void. By making this demand, my clients in no way waive any other potential claims and reserve all rights to raise such claims in the event that this matter is not settled prior to litigation.

Failure to respond to this demand letter within 30 days of your receipt by offering a reasonable settlement will result in the commencement of a lawsuit including claims under G.L. c. 93A.

Please have your own counsel contact me if either of the Companies would like to discuss a settlement of this matter or need additional information about this lawsuit.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen Gardner", written over a horizontal line.

Stephen Gardner
Director of Litigation,
For the Plaintiffs