

August 31, 2022

VIA ELECTRONIC MAIL

The Honorable Lina Khan, Chair
The Honorable Noah Phillips, Commissioner
The Honorable Rebecca Slaughter, Commissioner
The Honorable Christine Wilson, Commissioner
The Honorable Alvaro Bedoya, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20530

Re: Request to Investigate Food Marketing to Children Expenditures and Retail Practices in the Grocery Retail Industry

The undersigned organizations and researchers respectfully request that the Federal Trade Commission (FTC) use its 6(b) authority to conduct two studies that would make critical contributions to public health.

We have seen first-hand how the pandemic exacerbates health disparities, and conditions directly connected to diet-related diseases make our communities more vulnerable to threats. Building greater health resiliency in our communities requires a strong response from all levels of government.

The FTC's 6(b) authority is unique to the Commission and provides the only possible means of shedding light on several key areas that directly impact public health. We highlight two areas in which the Commission could prioritize its use of 6(b) authority to develop critical evidence needed in the service of measures to address and mitigate diet-related disease.

First, we request a follow-up study on marketing expenditures by food and beverage companies to children and adolescents. The Commission previously completed a review of food and beverage expenditures in 2008, *Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation: A Federal Trade Commission Report to Congress*, and a follow-up report in 2012, *A Review of Food Marketing to Children and Adolescents*.

Since these reports were published, it is clear that marketing tactics and stratagems continued to evolve, moving aggressively into digital media and becoming more sophisticated in marshalling data and algorithms to target individuals, including children.

In response, the Commission should update topics in previous reports while focusing on three major new priorities, including:

- Targeted food and beverage marketing to children and adolescents of color, including the quantity of this marketing and the tactics companies are using to reach them.
- Digital food and beverage marketing and data practices targeting children and adolescents regardless of platform type (expanding on FTC's current investigation into social media companies).

- Food and beverage marketing on educational technology platforms, including the ed tech companies' efforts to collect, the uses of, children's data while they are in school or participating in virtual learning.

Second, as highlighted in a request letter sent on February 19, 2021 from the Center for Science in the Public Interest, we are calling on the Commission to investigate slotting fees, trade spend and other trade promotion practices in the retail grocery industry. In 2003, the FTC reviewed grocery trade promotion practices. However, the focus was on the narrow issue of slotting fees and reached no concrete recommendations. These practices have greatly evolved since then. The undersigned organizations ask the FTC to reinvestigate slotting fees and expand the investigation to additional harmful practices in the grocery retail space, including trade spend and other trade promotion practices.

Such practices impact competition in the grocery aisle, dictate the choices available to consumers, and undermine health. These grocery retail practices drive up entry costs and cede control of critical retail decisions to leading brands, placing smaller manufacturers and fruit and vegetable producers at a disadvantage in the marketplace, and potentially compromising consumer health.

Additionally, just as the tech giants leverage both the online environment and the sales and data that generates to constrain choice and competition, the grocery retail environment is economically dominated by the brands and their contracts with retailers. The letter from February 19, 2021 includes specific suggestions regarding the data to be collected to help the FTC assess the anti-competitive and consumer choice impacts of such practices.

We appreciate your attention to these issues and would love to follow up to discuss these ideas at your convenience.

Sincerely,

Adrian Dominican Sisters, Portfolio Advisory Board

American Heart Association

Association of State Public Health Nutritionists

B.Komplete

Balanced

Bay Area Community Resources

Berkeley Media Studies Group

Bon Secours Mercy Health

Center for Biological Diversity

Center for Digital Democracy

Center for Science in the Public Interest

ChangeLab Solutions

Childhood Obesity Prevention Coalition (WA State)

Coalition for Healthy School Food

Common Threads

Congregation of St. Joseph

Consortium to Lower Obesity in Chicago Children

Consumer Federation of America

Daughters of Charity, Province of St. Louise

Fairplay

Feed the Truth

FoodPlay Productions

Healthy Savannah

Interfaith Center on Corporate Responsibility

Jump IN for Healthy Kids

Laurie M. Tisch Center for Food, Education & Policy

LunchAssist

Mercy Investment Services, Inc.

Michigan Advocates for Healthy Checkouts

Montgomery County Food Council

National Association of Pediatric Nurse Practitioners

National Center for Health Research

Public Good Law Center

Public Health Institute

Save the Children Action Network (SCAN)

Sisters of St. Francis of Philadelphia

Socially Responsible Investment Coalition

The Praxis Project

Trinity Health

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