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National Telecommunications and Information Administration
Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Docket No. NTIA–2023–0008; Initiative to Protect Youth Mental Health, Safety & Privacy Online

The Center for Science in the Public Interest (CSPI) commends the Department of Commerce, the United States government’s Task Force on Kids Online Health and Safety, and the National Telecommunications and Information Administration (NTIA) for their efforts to understand and address the emerging risks to the health, safety, and privacy of minors arising from the use of online platforms.

Since 1971, CSPI has worked to improve health by strengthening the food system to better support healthy eating. CSPI is an independent organization that does not accept any corporate donations and has long worked on issues related to the marketing of unhealthy food and beverages to children. We are submitting this comment to urge the NTIA to consider the harms of unhealthy food and beverage marketing to children online in its work to advance the health, safety, and privacy of minors.

This comment will address the following questions from the notice: 1) What are the current and emerging risks of harm to minors associated with social media and other online platforms?; 6) What practices and technologies do social media and other online platform providers employ today that exert a significant positive or negative effect on minors' health, safety, and privacy?; and 16) What guidance, if any, should the United States government issue to advance minors' health, safety, and/or privacy online?

Questions 1 & 6: Children are exposed to high levels of unhealthy food marketing online

The growth of online platforms in recent years has led many food and beverage companies to increasingly invest in online advertisements. For example, in 2019, fast food brands spent \$119 million on digital advertising in the U.S., a 74 percent increase from 2012.¹ While digital advertising spending amounted to 2 percent of fast food brands total ad spending in 2019, it is gaining ground relative to other forms of media spending: fast food television ad spending

¹ Harris JL, et al. *Fast Food FACTS 2021: Fast food advertising: Billions in spending, continued high exposure by youth*. UConn Rudd Center. June 2021. Accessed October 24, 2023. Available <https://media.ruddcenter.uconn.edu/PDFs/FACTS2021.pdf>

increased by only 12 percent and radio and outdoor spending decreased by 32 percent and 7 percent respectively between 2012 and 2019.²

This digital marketing can take a variety of forms across different online platforms. Influencer marketing, where a person is paid to post about a product or service on social media, is one rapidly emerging form of online marketing.³ An analysis of the presence of food and beverage brands in “made-for-kids” child influencer YouTube videos found that 65 percent of videos examined had at least one food-related appearance and 38 percent of videos had a branded food product appearance.⁴ Most of the branded food appearances were for candy (42 percent), followed by sweet/salty snacks, sugary drinks, and ice cream/toppings.⁵ Healthy products, such as water, plain milk, and fruit, made up only 9 percent of branded product appearances.⁶ An investigation by the Washington Post found that the food industry has paid health professional influencers to promote their products and counteract negative product messaging, such as promoting sugar and sugary products and the safety of aspartame.⁷ Not all of these posts were adequately disclosed to be paid advertisements.⁸ While the article did not describe how these types of influencers may be reaching children specifically, it indicates a larger trend of food industry ads on online platforms where they may impact children.

Food and beverage brands also reach young consumers online by purchasing ads on online platforms. These ads often follow the form and function of the platform, appearing in a similar manner to authentic content from non-commercial users. For example, Meta allows users on Facebook, Messenger, and Instagram to post stories, short format images and videos that disappear after 24 hours.⁹ Businesses can purchase story ads, which are nearly identical to non-ad stories and appear in between the authentic stories content.¹⁰ In Meta’s ad manager, businesses can select a target audience based off information such as demographics, location, and interests.¹¹ With this ad-targeting practice, businesses may either intentionally or inadvertently target youth for ads. Food brands like Oreo,¹² KFC,¹³ and Kettle Chips¹⁴ have used story ads across different Meta platforms to promote their products.

There are few policies protecting children from unhealthy food and beverage marketing online. A study of the 16 most popular social media platforms (Facebook, YouTube, WhatsApp,

² Harris, 2021.

³ McKinsey & Company. *What is influencer marketing?* April 10, 2023. Accessed October 24, 2023. Available <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-influencer-marketing>

⁴ Fleming-Milici F, Phaneuf L, Harris J. Prevalence of food and beverage brands in “made-for-kids” child-influencer YouTube videos: 2019-2020. *Pediatr Obes.* 2023;18.

⁵ Fleming-Milici, 2023.

⁶ Fleming-Milici, 2023.

⁷ O’Connor A, Gilbert C, Chavkin S. The food industry pays “influencer” dieticians to shape your eating habits. The Washington Post. September 13, 2023. Accessed November 7, 2023. Available <https://www.washingtonpost.com/wellness/2023/09/13/dietitian-instagram-tiktok-paid-food-industry/>

⁸ O’Connor, 2023.

⁹ Meta. *About stories.* n.d. Accessed October 24, 2023. Available <https://www.facebook.com/business/help/329494947852688?id=2331035843782460>

¹⁰ Meta, n.d.

¹¹ Meta. *Audience ad targeting.* n.d. Accessed October 24, 2023. Available https://www.facebook.com/business/ads/ad-targeting?ref=fbb_adsmanager_products

¹² Meta. *Oreo.* n.d. Accessed October 24, 2023. Available <https://business.instagram.com/success/2-oreo/>

¹³ Meta. *Introducing Facebook Stories Ads.* September 16, 2018. Accessed October 24, 2023. Available <https://www.facebook.com/business/news/introducing-facebook-stories-ads>

¹⁴ Meta, 2018.

Facebook Messenger, WeChat, Instagram, QQ, QZone, Douyin/TikTok, Sina Weibo, Reddit, Twitter, Douban, Snapchat, LinkedIn, Pinterest) based on number of active users found that, of the 12 platforms with advertising policies available to the public, 10 had no policies related to unhealthy food and beverage marketing.¹⁵ Snapchat had a policy requiring advertising for any food product to provide an accurate description of the characteristics and qualities of food production.¹⁶ YouTube had a policy prohibiting the advertising of consumable foods and beverages, regardless of the nutritional content of the product on its YouTube Kids platform for children under the age of 13.¹⁷ However, this policy does not apply to its primary platform.¹⁸ In contrast, 11 of the 12 platforms implemented a complete ban on advertising for tobacco products and related paraphernalia, and 8 of the 12 restricted advertising of alcohol and alcohol-related products.¹⁹

In addition to ads on social media platforms, children are contending with ads for food and beverage products on online learning platforms. A study examining online learning platforms found ads for food and beverage products from Kellogg's, McDonald's, and Kraft Heinz on ABCYa.com, in addition to other food ads on FunBrain.com and Poptropica.com.²⁰ The companies removed these ads from the platforms when researchers wrote to them in 2020.²¹ However, all three online learning platforms still allow ads on their websites^{22,23,24} and do not have policies prohibiting food and beverage advertising.

The food industry's food marketing to kids self-regulatory body, the Children's Food and Beverage Advertising Initiative (CFBAI), covers digital marketing only to a limited extent. Under CFBAI guidelines, the 22 participating companies can advertise their products to children under the age of 13 through internet/digital media and influencer marketing directed to children under the age of 13 only if those products meet CFBAI nutrition standards.²⁵ CFBAI assesses compliance with the program through the monitoring and assessment of ads on children's television, samples of child-directed websites and other digital content, and other covered media, as well as participant self-assessments and report on compliance in an annual report.²⁶ While CFBAI's annual report does highlight violations by companies (both CFBAI identified and

¹⁵ Sacks G and Sook Yi Looi E. The Advertising Policies of Major Social Media Platforms Overlook the Imperative to Restrict the Exposure of Children and Adolescents to the Promotion of Unhealthy Foods and Beverages. *Int J Environ Res Public Health*. 2020;17.

¹⁶ Sacks, 2020.

¹⁷ Sacks, 2020.

¹⁸ Sacks, 2020.

¹⁹ Sacks, 2020.

²⁰ Emond JA, et al. Unhealthy Food Marketing on Commercial Education Websites; Remote Learning and Gaps in Regulation. *Am J Prev Med*. 2021;60(4).

²¹ Emond, 2021.

²² ABCYa. *Privacy Policy*. August 21, 2018. Accessed November 7, 2023. Available <https://www.abcya.com/privacy/>

²³ Poptropica. *Privacy Statement*. October 2023. Accessed November 7, 2023. Available <https://www.poptropica.com/privacy>

²⁴ FunBrain. *Privacy Policy*. May 10, 2018. Accessed November 7, 2023. Available <https://www.funbrain.com/privacy-policy>

²⁵ BBB National Programs Children's Food and Beverage Advertising Initiatives. CFBAI Core Principles, 6th Edition. 2022. Accessed October 24, 2023. Available <https://bbbnpp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/cfbai/cfbai-coreprinciples.pdf>

²⁶ Enright M and Eskenazi L. *2021 Annual Report*. Children's Food and Beverage Advertising Initiative. December 2022. Accessed November 3, 2023. Available https://assets.bbbprograms.org/docs/default-source/cfbai/2021-cfbai-annualreport.pdf?sfvrsn=4c007187_3

participant self-reported),²⁷ the program does not make violations known elsewhere on its website outside of its report. Furthermore, the exact methodology of the monitoring and assessment process is not made clear in the annual report.

CFBAI has been criticized for allowing loopholes that allow companies to continue to market unhealthy foods to children.²⁸ Participating companies are not responsible if a child under the age of 13 sees an ad on an online platform where users must verify they are at least 13 years old upon signing up,²⁹ like Instagram,³⁰ Snapchat,³¹ and YouTube.³² Furthermore, CFBAI does not cover older children ages 13-17, and its reach is limited only to companies who agree to participate.³³

Questions 1 & 6: Digital food marketing causes harm to children

Children of all ages are susceptible to marketing. Young children under the age of 8 lack the cognitive ability to understand the persuasive intent of advertising, meaning they may take food marketing messages as fact and not something meant to persuade them.³⁴ While children's ability to understand the persuasive intent of advertising increases with age and development, older youth are still susceptible to advertising. Older youth may lack the ability to resist immediate gratification and may exhibit impulsive behaviors, potentially making them more susceptible to food marketing.³⁵ Marketing may also influence adolescents' normative beliefs about products, impacting their beliefs about the degree of social acceptability of a product and its prevalence of use.^{36,37} In other words, ads for unhealthy food and beverage products may influence adolescents' beliefs about how socially acceptable consumption of that product is and how frequently their peers might be consuming that product.

Furthermore, advertising may influence young people without conscious processing, meaning disclosures to clarify the purpose of the content (e.g., #Ad) may not be sufficient to protect children from the undue influence of a media placement. The Federal Trade Commission's updated Guides Concerning the Use of Endorsements and Testimonials in Advertising acknowledge that endorsements in advertisements addressed to children are of particular concern because research indicates disclosures will not work for younger children.³⁸ A systematic review and meta-analysis of experimental studies assessed advertising's impact on children's attitudes

²⁷ Enright, 2022.

²⁸ Jensen ML, et al. *FACTS 2022 Food industry self-regulation: Changes in nutrition of foods and drinks that may be advertised to children*. UConn Rudd Center. April 2022. Accessed November 3, 2023. Available <https://media.ruddcenter.uconn.edu/PDFs/FACTS2022.pdf>

²⁹ BBB National Programs, 2022.

³⁰ Instagram. *Terms of Use*. n.d. Accessed November 3, 2023. Available <https://www.facebook.com/help/instagram/478745558852511>

³¹ Snap, Inc. *Snap, Inc. Terms of Service*. August 15, 2023. Accessed November 3, 2023. Available <https://www.snap.com/en-US/terms>

³² YouTube. *Terms of Service*. January 5, 2022. Accessed November 3, 2023. Available <https://www.youtube.com/static?template=terms>

³³ BBB National Programs, 2022.

³⁴ Harris JL, Brownell KD, Bargh JA. The Food Marketing Defense Model: Integrating Psychological Research to Protect Youth and Inform Public Policy. *Soc Issues Policy Review*. 2009;3(1):211-271.

³⁵ Harris, 2009.

³⁶ Harris, 2009.

³⁷ Elmore KC, Scull TM, Kupersmidt JB. Media as a "Super Peer": How Adolescents Interpret Media Messages Predicts Their Perception of Alcohol and Tobacco Use Norms. *J. Youth Adolesc*. 2017;46:376-387.

³⁸ 88 Federal Register 142. Guides Concerning the Use of Endorsements and Testimonials in Advertising.

and the influence of children's understanding of the intent of advertising.³⁹ Five of seven studies that measured an interaction between understanding of the purpose of advertising and attitudes towards advertised products included in the review reported that children's greater understanding of the intent of advertising did not limit favorable attitudes toward the advertised product. This suggests children's understanding of the intent of advertising is not necessarily protective against food marketing. A meta-analysis comparing advertisement exposure to no advertisement/a neutral advertisement by attitude type found that any advertising exposure was associated with more positive attitudes for both the brand and the product.

These concerns are not merely theoretical; evidence confirms that advertising affects actual consumption. Digital marketing of unhealthy food and beverages impacts children's food preferences, attitudes, and consumption patterns. A systematic review found marketing of foods and beverages through social media and advergames (a game that uses advertising techniques to promote a product or service⁴⁰) promotes children's requests for, and choice of (both hypothetical and actual) foods.⁴¹ Of the four experimental studies included in the review that examined the influence of social media on actual food or beverage intake, the promotion of unhealthy snacks by influencers led to higher snack intake and had no effect on vegetable intake. Of the five studies included in the review that examined the effects of advergames on actual food and beverage choice, there were mixed results. Three studies showed that exposing children to advergames promoting unhealthy or healthy products increased selection of the advertised product, and two studies found no effect. Of the seven experimental studies included in the review that examined the effects of unhealthy advergames on food or beverage consumption, exposure to unhealthy advergames significantly influenced children's energy-dense snack consumption in four studies, exposure to any food marketing resulted in increased consumption of the marketed product in one study, and in two studies unhealthy advergame exposure had no effect on snack intake. However, eight of the experimental studies mentioned here were found to have a high risk of bias due to a variety of different issues such as a lack of information about blinding to the intervention (for participants and researcher assistants) (eight studies), a lack of randomization (one study), a lack of information on baseline differences between intervention groups (one study), loss of more than 5% of participants to follow-up (three studies), and lack of a pre-specified analysis plan (eight studies).

Young people may even develop a preference for the unique way products are marketed online. One study found that adolescents reported higher preferences for unhealthy food and beverage advertisements that originated on Instagram, rating the Instagram ads as trendier and more artistic, and liking them more than traditional ads (e.g., print, noninteractive online banner ad) for unhealthy products when both were presented without information as to where the ad was placed.⁴² When traditional ads were photoshopped to appear as though they originated on Instagram and rated alongside ads that originated on Instagram in full context (account name, likes, comments, etc.), adolescents also rated the ads that originated on Instagram as trendier.⁴³

³⁹ Packer J, et al. Advertising and Young People's Critical Reasoning Abilities: Systematic Reviews and Meta-analysis. *Pediatrics*. 2022;150(6).

⁴⁰ Merriam-Webster. *Advergame*. n.d. Accessed November 8, 2023. Available <https://www.merriam-webster.com/dictionary/advergame>

⁴¹ McCarthy CM, de Vries R, Mackenbach JD. The influence of unhealthy food and beverage marketing through social media and advergames on diet-related outcomes in children—A systematic review. *Obes Rev*. 2022;23.

⁴² Bragg M, et al. How Food Marketing on Instagram Shapes Adolescents' Food Preferences: Online Randomized Trial. *J. Med. Internet Res*. 2021;23(10).

⁴³ Bragg, 2021.

Question 16: Recommendations

CSPI is not alone in its concerns over digital food and beverage marketing to youth. In 2020, the American Academy of Pediatrics issued a policy statement expressing concern over the effects of digital marketing on kids, including the impact of digital food and beverage marketing on children's health, and called on industry and policy makers to reduce advertising of unhealthy foods and beverages to youth.⁴⁴

The NTIA should advise social media companies and other online platforms that offer access to children under the age of 18 to adopt policies to prevent unhealthy food advertising to youth. This could include policies that prohibit the advertisement of all foods and beverages (as YouTube Kids has done), regardless of nutritional content, or policies that restrict advertisement only to foods and beverages that meet rigorous nutrition standards. When adopting these policies, platforms should take steps to ensure they are implemented and enforced, and regularly report on compliance. The NTIA should give special attention to online platforms with audiences that are primarily children under the age of 18 (e.g., online learning platforms) during this effort.

In addition, given the highly personalized nature of most online advertisements, food and beverage companies may have the ability to target their products to specific demographics of children, such as Black children, Latino children, LGBTQ+ children, and children from families with lower income. The NTIA should encourage research into whether brands are disproportionately advertising unhealthy foods and beverages to particular child demographic groups and how that may be impacting food behaviors, and encourage online platforms to prohibit the use of personalized ads in discriminatory ways.

CSPI appreciates the opportunity to provide insight on digital food and beverage marketing to youth to assist in the NTIA's efforts to understand and address the health harms to minors arising from the use of online platforms. We urge the NTIA to address the harms of digital food and beverage marketing to youth in its future activities.

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⁴⁴ Radesky J, et al. Digital Advertising to Children. *Pediatrics*. 2020;146(1).

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