



Burton H. Snyder
Senior Vice President,
General Counsel and Secretary

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100 Crystal A Drive
P.O. Box 810
Hershey, PA 17033-0810
Phone: 717-534-7912
Fax: 717-534-7156
bsnyder@hersheys.com

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Interagency Working Group on Food Marketed to Children: General Comments and
Proposed Marketing Definitions: FTC Project No. P094513

Introduction

The Hershey Company (“Hershey”) is the largest producer of quality chocolate in North America and a global leader in chocolate and sugar confectionery. Headquartered in Hershey, Pennsylvania, The Hershey Company has operations throughout the world and more than 13,000 employees. With revenues of more than \$5 billion, Hershey offers a wide range of confectionery products, including such iconic brands as *Hershey’s*, *Reese’s*, *Kisses*, *Hershey’s Bliss*, *Special Dark*, *Hershey’s Syrup*, *Kit Kat*, *Twizzlers*, *Ice Breakers*, *PayDay* and *Jolly Rancher*. Hershey also is a leader in the premium and artisan chocolate segments, with such brands as *Scharffen Berger* and *Dagoba*, offered through the Artisan Confections Company, a wholly-owned subsidiary. The company is focused on growing its presence in key international markets in Asia and Latin America while continuing to build its position in the United States. Corporate Social Responsibility is an integral part of the company’s global business strategy, including goals and priorities focused on fair and ethical business dealings, environmental stewardship, fostering a desirable workplace for employees, and positively impacting society and local communities. The Milton Hershey School, established in 1909 by the Company’s founder and administered by the Hershey Trust Company, provides quality education, housing, and medical care at no cost to children in social and financial need. Students of Milton Hershey School are direct beneficiaries of The Hershey Company’s success.

Hershey appreciates the opportunity to comment on this important issue. With the ***Preliminary Proposed Nutrition Principles to Guide Industry Self Regulation***, the Interagency Working Group (“IWG”) has proposed nutrition standards and marketing restrictions that would severely and negatively impact Hershey. For a Company, such as Hershey, whose name is synonymous with our products, the IWG marketing restrictions would have far-reaching and unintended consequences. Among one of the most basic and obvious concerns, The Hershey Company shares its name with the town in Pennsylvania where it is headquartered. Additionally, that town

has street lights in the shape of wrapped and unwrapped *Hershey's Kisses* chocolates. Hundreds of thousands of tourists visit Hershey annually to enjoy its family-oriented attractions, including *Hersheypark* and *Hershey's Chocolate World*. Is the IWG seriously suggesting with its proposal that the town of Hershey, PA, its many sites, and even its lamp posts are prohibited forms of marketing due to their possible influence on children and adolescents ages 2 – 17 who accompany their parents when they visit Hershey?

Background

In December 2009, the Federal Trade Commission (“FTC”), U.S. Department of Agriculture (“USDA”), Centers for Disease Control (“CDC”) and the U.S. Food and Drug Administration (“FDA”) released proposed voluntary guidelines for food and beverage marketing to children and teens (ages 2 to 17), known as the IWG guidelines. The guidelines were developed to comply with a provision of the FY’2009 Omnibus Appropriations bill developed by Senator Harkin (D-IA).

On April 28 of this year, the IWG released an updated version of the 2009 guidelines, with essentially little to no improvement. The proposed nutrition standards continue to contradict nutrition science, and remain inconsistent with and more restrictive than other nutrition standards, including those for the WIC Program, the National School Lunch Program and corresponding 2011 proposed rule, the Healthier U.S. Schools Challenge and the 2010 Dietary Guidelines for Americans, which are intended to guide U.S. Government nutrition policies.

Under the proposed IWG nutrition standards, not a single Hershey confectionery product would qualify for marketing to children and teens, ages 2 - 17.

The IWG proposal includes sweeping new restrictions on food marketing by broadly defining marketing to include packaging, point-of-sale displays, and sponsorships as well as television, radio, print and on-line media. Companies would not be permitted to use equity characters or sports heroes on many packages, could no longer design food in the shape of animals, and would be prohibited from sponsoring community organizations, including little league teams.

Impact

Hershey would like to associate itself with separate comments filed on the IWG proposal by the Grocery Manufacturers Association (“GMA”) and the National Confectioners Association (“NCA”). As a member of both the GMA and NCA, their comments incorporate the broad and adverse impacts of the proposal on a food company such as Hershey.

The following comments seek to highlight several unintended consequences resulting from the IWG proposal, specifically relating to philanthropic and community activities that Hershey proudly participates in and sponsors. An example of the negative impact on seasonal business is also included. Legal counsel has advised us that the following activities would be precluded by the proposal.

Hershey would be prohibited from sponsoring *Hershey's Track & Field Games*. By prohibiting advertising or promotional activity in conjunction with philanthropic endeavors, Hershey would be precluded from sponsoring *Hershey's Track & Field Games*, an event that Hershey has solely sponsored for 34 years. This program has introduced more than 10 million children in 3,000 communities across the U.S and Canada to the fun and rewards of physical fitness. *Hershey's Track & Field Games* are the largest youth sports program of its kind in North America. Children ages 9-14 compete in various track and field events, starting at the local level and progressing to state meets and the selection of regional finalists. The Games culminate in the North American Final, held in Hershey, Pennsylvania. Each year, finalists from each region receive an all-expense-paid trip to Hershey to participate in the North American Finals.

Hershey would be prohibited from marketing seasonal shaped and seasonally wrapped products. By limiting the ability to use packaging and point-of-purchase displays, the guidelines would prohibit seasonal products related to every major holiday including Valentine's Day, Christmas, Halloween, and Easter. This would include *York Peppermint Pattie Snowflakes*, *Bats*, and *Hearts*, as well as *Reese's Reester Bunny*, *Reese's Peanut Butter Eggs*, *Bells*, *Christmas Trees*, *Hearts*, and *Snowmen*. Seasonal shapes and seasonal packaging are fun and happy traditions currently enjoyed by the entire family, not just children and adolescents.

Hershey would be prohibited from supporting local communities through the sponsorship of local teams and clubs. Limiting the ability of companies or brands to sponsor events and sports teams, especially when those sponsorships would be visible to teen audiences, would impact not only major entertainment events, but also and perhaps more importantly, remove one of the ways that The Hershey Company lends its support to communities. Hershey would no longer be able to contribute funds to Virginia's Stuarts Draft High School for a new outdoor scoreboard, nor sponsor the Cumberland Valley (Pennsylvania) Boys Basketball season, nor provide uniforms for the Palmyra (Pennsylvania) Pumas All-Star Cheerleading Squad.

Hershey would no longer be able to use its iconic *Kissmobiles* to support charitable and community events. Originally commissioned to generate public awareness and support for charity partner, the Children's Miracle Network, the *Kissmobiles* now travel about 30,000 miles annually, visiting charitable events, schools, and shopping malls. By prohibiting advertising or promotional activity in conjunction with a donation to an organization, program, or event with the use of trade names, logos etc., Hershey could no longer satisfy appearance requests including those from the Hershey High School Homecoming Parade, Make-A-Wish Foundation, and the Hampden (Pennsylvania) Volunteer Fire Company Touch-A-Truck Day.

These are just a few of the activities that Hershey, as a good corporate citizen and member of the community, would be unable to support based upon the IWG proposal.

Responsible Advertising Practices

Hershey is committed to responsible marketing and advertising of its products. In 2006, Hershey was one of 10 leading food and beverage companies that partnered with the Council of Better Business Bureaus to launch the Children's Food and Beverage Advertising Initiative ("CFBAI"), a self-regulatory program that applies science-based nutrition standards to marketing viewed by children. Under this program Hershey has committed to not advertise candy to children under 12.

Many of the changes in advertising on children's programming can be attributed to the CFBAI commitments. In fact, Nielsen data developed by the Georgetown Economic Services and released in May by the Grocery Manufacturers Association ("GMA") show that, between 2004 and 2010, the average number of food and beverage advertisements viewed on children's programming fell by 50 percent.


Not only does the IWG proposal ignore sound science and pose unrealistic marketing restrictions that greatly exceed the intentions of Congress, it also disregards this extraordinary progress already made by industry.

Proposed Action for the IWG

Hershey is aligned with the efforts of the GMA and NCA in urging the IWG to withdraw the proposed guidelines and to comply with congressional direction by completing the study required by Congress in the FY'2009 Omnibus Appropriations Bill. In addition, the IWG study should comply with Executive Order 13653 by assessing the cost of the proposed marketing restrictions; ensure that subsequent recommendations are based upon a reasonable determination that the benefits justify the costs; and, clearly demonstrate that the proposed restrictions will help consumers build healthy diets, based upon objective science. Finally, the IWG should assess the progress already achieved by the food and beverage industry.

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The Hershey Company appreciates this opportunity to share its views with the Interagency Working Group. We would be glad to answer any questions concerning our comments.

Respectfully Submitted, 

Burton H. Snyder
Senior Vice President, General Counsel & Secretary
The Hershey Company 