



{ center for digital democracy }

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For Immediate Release
October 19, 2011

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Consumer Groups File FTC Complaint Against PepsiCo for “Deceptive and Unfair Digital Marketing Practices” Targeting Junk Food to Teens

Complaint Accompanied by New Report Identifying “Problematic Practices” used by Digital Food and Beverage Marketers

Washington, DC: Consumer and privacy organizations filed a complaint with the Federal Trade Commission (FTC) today, calling on the agency to investigate and bring an action against PepsiCo and its subsidiary Frito-Lay for “engaging in deceptive and unfair digital marketing practices in violation of Section 5 of the FTC Act.” The complaint focuses on a series of Frito-Lay’s online marketing campaigns—including “Hotel 626,” “Asylum 626,” and *Late Night Concerts*—that target teens through a variety of stealth interactive marketing and data collection techniques involving social media, immersive multi-media content, mobile phones, and gaming platforms. The complaint cites materials from PepsiCo’s advertising partners to provide detailed documentation of the company’s strategies and tactics for targeting teens online to increase sales of its Doritos brand.

The complaint, which was filed by the Center for Digital Democracy (CDD), Consumer Action, Consumer Watchdog and The Praxis Project, comes at a time of growing concern over the nation’s youth obesity epidemic. The level of obesity among U.S. adolescents has nearly quadrupled over the past four decades, with one out of every three currently either overweight or obese. These rates are significantly higher for African-American and Hispanic adolescents.

The complaint identifies three ways in which PepsiCo’s digital techniques are deceptive:

- Disguising its marketing efforts as entertaining videogames, concerts, and other “immersive” experiences, making it more difficult for teens to recognize such content as advertising;

- Claiming to protect teen privacy while collecting a wide range of personal information, without meaningful notice and consent; and
- Using viral marketing techniques that violate the FTC's endorsement guidelines.

"PepsiCo's covert ad campaigns take advantages of teens' vulnerabilities and encourage them to buy and consume a product that is harmful to their health," explained Angela Campbell, Counsel for CDD and Director of Georgetown Law's Institute for Public Representation, which drafted the complaint. She urged the FTC to promptly begin its own investigation and to bring action to prevent similarly deceptive advertising campaigns in the future.

"PepsiCo has used an arsenal of powerful online marketing tactics in these campaigns, including interactive games with storylines designed to heighten arousal and instill fear and anxiety in teens," explained Jeff Chester, CDD's Executive Director. "This complaint sheds a spotlight on practices that are increasingly used routinely in the industry, but which raise many troubling consumer protection and privacy concerns – especially when adolescents are the target."

The complaint documents a number of PepsiCo/Frito-Lay campaigns that violate the law, including the following:

- *Hotel 626* - a multi-dimensional, online interactive game designed to "scare the crap" out of teens, according to the advertising agency. The campaign uses a variety of under-the-radar techniques to entice teenagers to "check in" to the online hotel (which was only open from 6 p.m. to 6 a.m.); encourages them to post and share photos of themselves as they participate; prompts them to "send a scare" to friends in their social networks; and requires them to use their webcams, microphones, and mobile phones to "escape" the nightmarish experience.
- *Doritos Rihanna Late Night* - an online "entertainment experience," featuring "pop icon" Rihanna, designed to increase sales of Doritos. According to industry documents, the company "looked at how teenagers were spending their money and realized that for the price of a 99-cent bag of Doritos they could just as easily buy an iTunes download, smart phone app, or Xbox upgrade." Frito-Lay tied purchase of the product with accessing its website, which contained an "IR marker on the back of each bag" that gave "users control over the star" and other features. Teens were told that "by bringing a bag of chips" to its music site, they could "unlock the darker, hotter, late night side of Rihanna."

“Frito-Lay is well aware that teens are uninterested in advertising and therefore chooses to disguise its marketing as a more appealing format by employing minimal branding, immersive techniques, and viral marketing designed to make teens believe they are playing a video game or watching a concert rather than viewing advertisements,” the complaint explains. The company’s “concealment of the nature of its marketing to increase the likelihood that the consumer will take the desired action is a deceptive practice under Section 5.”

The complaint also identified deceptive techniques employed by the company to collect and use personal information. “Frito-Lay deceives teens by making representations that it will protect teens’ personal information and then acting inconsistently with that policy,” and “by collecting personal data without adequately disclosing the extent or purpose of that data collection.” For example, teens registering on the Hotel 626 site are asked to provide name, email, and date of birth, and to enable their webcam and microphone. In bold letters, the site assures users that “HOTEL 626 WILL CALL YOU AND TAKE YOUR PICTURE BUT WE’LL RESPECT YOUR PRIVACY.” But only by reading the privacy policy carefully would they learn that their information could be shared “within the PepsiCo family of companies” and could be used “for a variety of marketing purposes.” Asylum 626 was designed to maximize access to teens’ personal information. Users who want to play the game are encouraged to give the site access to their Facebook and Twitter accounts with the promise that the more information they provide, the “scarier” the experience will be.

The filing cites research indicating that developmental, social, and other factors during adolescence create conditions that make teens particularly susceptible to the kinds of techniques cited in the complaint. For example, teenagers are likely to act impulsively, be easily influenced by their peers, and engage in risk-taking behaviors without thinking of the consequences of their actions.

In “Digital Food Marketing to Children and Adolescents: Problematic Practices and Policy Interventions,” a report commissioned by the National Policy and Legal Analysis Network to Prevent Childhood Obesity (NPLAN) and also released today, authors Kathryn Montgomery and Jeff Chester deconstruct the techniques used to promote food and beverage products to young people. Among the practices analyzed are the following:

- *Augmented reality, online gaming, virtual environments and other immersive techniques* that can induce “flow,” reduce conscious attention to marketing techniques, and foster impulsive behaviors;

- *Social media techniques* that include surveillance of users' online behaviors without notification, as well viral brand promotion;
- *Data collection and behavioral profiling* designed to deliver personalized marketing to individuals without sufficient user knowledge or control;
- *Location targeting and mobile marketing*, which follow young peoples' movements and are able to link point of influence to point of purchase; and
- *Neuromarketing*, which employs neuroscience methods to develop digital marketing techniques designed to trigger subconscious, emotional arousal.

The report calls on industry and regulators to develop a set of Fair Marketing Principles to guide companies that use digital media to promote their brands to teenagers.

“The food industry is targeting teens with a variety of interactive techniques that take advantage of their vulnerabilities,” commented Dr. Kathryn Montgomery, Professor in the School of Communication at American University. “Some of these techniques are unfair and deceptive and are purposely designed to operate under the radar of parents and policy makers. Many of these campaigns are aggressively promoting fast foods, high-fat snacks, sugary soft drinks, and other unhealthy products to teenagers at a time when obesity among adolescents has reached epidemic proportions,” she explained. “The food and advertising industries are also using heavy-handed lobbying tactics to intimidate regulators and quash any public discussion of food marketing to teens.”

“Time and again, we have seen food and beverage companies claim they want to help protect children's health and that their voluntary pledges are enough,” said Samantha Graff, Legal Research Director of NPLAN. “But this report reveals that they're promoting junk food using tactics that take unfair advantage of our kids and, in some cases, violate the law. Industry self-regulation won't work if food and beverage companies are making up their own rules without regard for the legal, ethical, or health implications.”

Chester and Montgomery were responsible for the campaign that led to the passage of the Children's Online Privacy Protection Act (COPPA) in 1998. They currently lead the effort to update the FTC's rules on COPPA. CDD and child health, consumer, and privacy groups have also called on the FTC to propose data collection safeguards for adolescents, by declaring them “sensitive users” in the Commission's forthcoming framework for online privacy.

The complaint, appendix, reports and videos are available at: <http://case-studies.digitalads.org/ftc-complaint/>.

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