

Food marketing and research on kids lacks government oversight

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Federal regulations ban tobacco companies from advertising to kids and prohibit profanity on television before 10 p.m. But what is protecting children from predatory advertising of junk food, especially with sneaky

online marketing tactics like the use of influencers?

Very little, thanks to outdated and weakened government oversight, according to a new legal analysis published in the *Journal of Law, Medicine & Ethics* by researchers at the NYU School of Global Public Health and the Friedman School of Nutrition Science and Policy at Tufts University.

"The U.S. overwhelmingly relies on industry [self-regulation](#), which has not kept pace with modern marketing practices," says study author Jennifer Pomeranz, assistant professor of public health policy and management at NYU School of Global Public Health.

Self-regulation falls short in today's marketing landscape

Commercial speech, including advertising, is largely protected by the First Amendment. The Federal Trade Commission (FTC), which protects consumers from deceptive and unfair business practices, has limited authority over advertising directed at kids.

While the FTC gathers and reports data on food advertising to youth and brings cases against food companies for specific unfair and deceptive practices, Congress stripped the agency of its authority to regulate marketing directed at children considered unfair in 1980, after the FTC tried to limit sugary food and drinks in commercials during children's television. The FTC has not attempted to use its authority over deceptive acts and practices, in part out of concern over similar backlash.

Instead, the U.S. largely relies on food and beverage companies to self-regulate. The industry-created Children's Food and Advertising Initiative (CFBAI) includes voluntary—and sometimes lax—nutritional standards

for marketing to kids.

However, the researchers say gaps in CFBAI allows for questionable marketing that makes the nutrition standards irrelevant: the initiative only applies to children under 12 and media directed at young kids, it does not apply to packaging or stores, and allows companies to market their brands by showing somewhat healthier products that introduce kids to unhealthy brand lines.

Importantly, today's marketing to children goes well beyond the traditional television commercial. Companies employ a variety of tactics to reach kids online, especially on YouTube. Products are often promoted using influencers and "host-selling," where a program character delivers a commercial adjacent to children's programming featuring the character, a [practice](#) that the Federal Communications Commission (FCC) prohibits on television but lacks a similar rule for online marketing.

"Modern marketing practices are intended to blur the distinction between an ad and entertainment," says study author Dariush Mozaffarian, dean for policy of the Friedman School at Tufts. "Research indicates that even adults have difficulty identifying sponsored content online, so children surely need some protection from these predatory practices."

The authors encourage Congress to reinstate the FTC's authority to regulate unfair marketing targeting children and the FTC to examine online marketing of food and drinks, including using its authority over deceptive practices.

Studying kids with no rules

When universities want to do research involving [human subjects](#), the

studies must be reviewed and approved by an Institutional Review Board to protect the participants, especially vulnerable populations like children. This is required by a federal policy called the Common Rule and applies to researchers receiving federal funds.

However, there are no similar requirements for commercial research on children. For instance, a food company can have a child psychologist test tactics and messages on children to determine how to best persuade kids to want products and to influence their parents to buy them—without any oversight. This is particularly problematic when companies target their unhealthy products to racial and ethnic minority youth.

"The disparity in rules for academic institutions seeking to engage in [marketing research](#), who must obtain children's assent and [parental consent](#), versus no requirements for for-profit entities engaging in the same activity, is striking," Pomeranz and Mozaffarian write.

The researchers note that [food companies](#), which receive millions in tax subsidies, would meet the criteria for research on children set out by the Common Rule—if the Internal Revenue Service (IRS) had signed on to the Common Rule like 20 other federal agencies have. In light of the spirit and purpose of the Common Rule to protect research subjects, the authors urge the federal government and state attorneys general to take a closer look at companies' research on children.

What about parents?

In many aspects of life, parents are expected to act as gatekeepers for their children. Opponents of government regulation of marketing to children argue that government action undermines parental control.

"While this might have made sense when children were primarily watching television and parents had more control over what their

[children](#) watched, parental oversight has become less feasible in the face of covert online marketing practices such as host-selling and the use of influencers. In today's media landscape, parents have little ability to act as the sole deciding factor in what types of food are shown to their kids," says Pomeranz.

"The U.S. needs to move away from voluntary industry self-regulation to effective policies that account for current marketing practices."

More information: Jennifer L. Pomeranz et al, Food Marketing to—and Research on—Children: New Directions for Regulation in the United States, *Journal of Law, Medicine & Ethics* (2022). [DOI: 10.1017/jme.2022.92](#)

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