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## Bob Takes a Hit

*Anti-obesity activists say SpongeBob is Enemy No. 1. Does it signal more restrictions on kids' food marketing?*

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By Jim Edwards



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# SpongeBob, Kellogg Get the Big Squeeze

Anti-obesity groups want to fatten up on kid-food marketing. **By JIM EDWARDS**

**SPONGEBOB SQUAREPANTS**, meet Joe Camel.

That was the subtext of a legal memo sent to Nickelodeon and Kellogg last week by lawyers for activists who want to restrict the advertising of junk food to children. The memo, from the Center for Science in the Public Interest, accuses the companies of using the undersea pineapple to sell sugary snacks the same way R.J. Reynolds was accused of using its shades-wearing dromedary to move cigarettes.

Citing Rice Krispies, Pop-Tarts, Cheez-Its, E.L. Fudge cookies and Eggo waffles, among others, as products that have licensed SpongeBob, the Washington-based CSPI's memo states, "All of those products are of poor nutritional quality."

At one level, the threatened suit can be written off as yet another set of fad-driven plaintiffs' lawyers looking for deep pockets to bail out "victims" who made themselves fat. But the broader picture reveals just how successful anti-obesity advocates have been in restricting the activities of major food marketers, and how they consider themselves well on the way to turning Kellogg, McDonald's and Kraft et al into the next Big Tobacco:

- The FCC last year restricted the amount of ad inventory on children's shows, and channel owners agreed to provide at least three hours a week of educational programming starting Jan. 1.

- More than a dozen states have enacted junk food vending machine bans for their school districts, including Maine (*Brandweek*, Dec. 6, 2004), whose ban began this academic year.

- In August, the Physicians Committee for Responsible Medicine successfully persuaded Kraft in a Virginia suit to drop its claims that dairy products help consumers lose weight.

- The Grocery Manufacturers of Ameri-

ca in July agreed to support pre-broadcast review of its members ads by the Children's Advertising Review Unit and to ban paid product placement.

- The suit filed against McDonald's by New Yorkers who claim Big Macs made them obese is alive and well, reinstated on appeal last year. And McDonald's has famously removed "Supersize" items from its menus.

The developments all indicate that the food business is, inch by inch, losing ground to its critics, and losing places and delivery vehicles for its messages.

"I think their long-term objective is to stop advertising of any type," said William MacLeod, partner at Collier Shannon Scott, Washington, D.C., and a former bureau director at the Federal Trade Commission.

The hostility to cartoon-promoted food is based on the increasing chorus of parents who see a correlation between junk food advertising and obesity in children. Lisa Swythe of Brooklyn, N.Y., for instance, has a four-year-old who nags her in the supermarket for products the girl has never previously shown interest in simply because they feature animated beings. Until 2002, Swythe was better known as the director of commercial clearances for MTV Networks. Now she is a member of the Campaign for a Commercial Free Childhood. "These characters are only appearing on low-value products. If SpongeBob was on spinach she would probably want spinach. If we had these characters appearing in the same numbers

on the vegetable aisle, it would make kids more willing to try stuff like that," she said.

SpongeBob does, in fact, appear on Boskovich spinach. But that is only a drop in the ocean, Swythe said. "When 98 commercials are for junk food and only four messages are for healthy eating, it's pretty hard to get the message for healthy eating."

That opinion received considerable impetus from the December publication of *Food Marketing to Children and Youth:*

*Threat or Opportunity?* by the National Academy of Sciences' Institute of Medicine. It cited "strong evidence" that kid's diets were influenced by ads they see. The report recommended, "If voluntary efforts related to advertising during children's television programming are unsuccessful in shifting the emphasis away from high-calorie and low-nutrient foods and beverages to the advertising of healthful foods and beverages, Congress should enact legislation mandating the shift on both broadcast and cable television."

Such a "shift" raises the specter of an industrywide settlement of the type agreed to by the tobacco companies—which extracted billions of dollars in damages and tight restrictions on marketing in return for an end to the legal harassment.

That scenario is unlikely, said MacLeod, simply because of the fundamental difference between food and tobacco: You can eat junk food and remain healthy, but you cannot smoke and be healthy.

The anti-obesity activists, however, don't see it that way. Rather, in the same way the tobacco companies deceived the public about the toxicity of their products, food companies are "deceiving" small children because, they believe, kids under eight are not psychologically capable of distinguishing between advertising and entertainment.

Thus, later this week, marketing lawyers from Italy, China, Brazil and the United Kingdom will address their American counterparts at the Association of National Advertisers' annual advertising law conference in New York, where two sessions will be about attacks on the food biz.

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## The good, the bad and the spongy:

SpongeBob touts spinach, animal crackers; fast-feeders like Burger King use movies to entice kids.

**"These characters are appearing only on low-value products."**

# Putting the Squeeze on SpongeBob

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“Advertisers and brand owners need to get on the front foot, and take the moral high ground in some of these debates,” said London attorney Brinsley Dresden, president of the Global Advertising Lawyers Alliance.

Anti-obesity activists in the U.S. sometimes are roused by global developments, particularly in Western Europe and Scandinavia, where child ad rules tend to be stricter, Dresden said. Greece, for example, has a ban on TV ads for children’s toys. But the decline in ad revenue led to a decline in funds to produce kids’ TV, Dresden said, and Greece had to import cheap, dubbed shows.

Nickelodeon last week produced a staunch defense of its health-and-exercise oriented efforts. But rep Joanna Roses declined to say whether Nick execs were bracing to defend the \$1.5 billion yellow metazoan.

Kellogg had only a prepared statement: “Kellogg is proud of its products and the contributions they make to a healthy diet.

We have a longstanding commitment to marketing in a responsible manner.”

The GMA dismissed the suit as “gratuitous.” Though it has agreed to restrict members’ ads in line with CARU’s rules, GMA’s Web site last week showed it was aggressively lobbying to keep its universe from continuing to shrink. Of 84 GMA letters on school nutrition reform legislation, all but 15 were in “opposition” to those reforms.

Such facts motivate Prof. John Banzhaf III of George Washington University Law School, who has inspired much of the recent litigation. He wants fast-feeders to provide clear nutritional information on menus, appropriate health warnings on products and healthy alternatives to shakes and ice cream. Would that end the litigation? “No,” Banzhaf said. “We’ll probably find new legal theories . . . All of us would much prefer this be done by legislation than litigation. The parallel here is the tobacco industry.”

—with Sonia Reyes