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## The Perfect Storm

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Thank you for that kind introduction.

Our theme today is self-regulation and social responsibility in advertising. We can see fantastic examples of social responsibility just outside in the lobby exhibit. Certainly, throughout the world, there are great examples of successful and responsible self-regulation as well. As an industry, advertising remains positioned to make a huge difference in how we all communicate with one another and the ethics that go with that position. And the industry takes that role very seriously.

So with such serious respect for social responsibility, why does this industry so need self-regulation?

Today, we are approaching a perfect storm where forces opposed to free speech for advertisers are converging unlike they ever have before. This impending perfect storm, should it strike, has the potential of wreaking havoc on an advertiser's right to freely speak the truth to their consumers or to seek them out in an effective manner.

But before we look at the fast approaching storm, let's briefly revisit the 1970's when the winds of regulation blew strong in the United States.

In the 1970's there was uproar among consumers that the cereal companies were poisoning our children with high sugar, non-nutritious foods. The Federal Trade Commission, the United States' primary government regulator of advertising, proposed a rule that would have banned advertising of cereal and high sugar foods to children. In response to the FTC initiative, the industry rose as one to object. Studies were presented that showed there was no connection between the advertising and poor diet among children. In fact, the fault lay with parents too willing to succumb to a whining child's demand for more Sugar Puffs. Congress, in a moment of clarity so absent today, responded by pulling away the FTC's authority to make such a rule, putting an end to the debate. Tony the Tiger was safe and no longer an endangered species.

This controversy of the 1970's planted the seeds of self-regulation for the advertising industry. Today, under the auspices of the National Advertising Review Council, the National Advertising Division oversees disputes between marketers over comparative advertising, and the Children's Advertising Review Unit monitors and provides self-regulation guidance for children's advertising. Each group also brings their own cases when conditions require it. While a voluntary process, virtually all marketers who have found themselves before the NAD or CARU freely participate and compliance is nearly 100%. For decades, this self-regulatory system has received laudatory praise from government overseers as one of the best example of successful self-regulation in any industry. The system has been an integral part of keeping the playing field even and preventing overreaching government regulation and intrusion into the marketplace. It has also helped keep disputes under control, preventing them from becoming major lawsuits that sap the energy and resources of marketers.

Now flash forward to the last two years. How things have changed!

As 2005 began, on the day the Pope died, McDonalds paid \$8.5 million to settle a class action, a lawsuit gimmick in the United States that allows an attorney the right to sue for all consumers who may have been injured. The plaintiffs in that case took McDonald's to task for failing to reduce the trans fat content of its foods as fast as it had said it would. The money went primarily to charity and educational efforts on how to avoid trans fats. It's interesting that McDonalds never had to promise to remove anything from their products. They chose to do so voluntarily and out of their social responsibility. Their reward was an additional payoff of \$8.5 million payment.

On the heels of the McDonald's settlement, another class action was filed in California against Kraft, General Mills, and Kellogg, alleging that the advertising for their low sugar cereals was deceptive because they still contained carbohydrates that were equally non-nutritious and fattening for children. And we all know painfully well how unpredictable everything in California can become. That case is pending in the California courts.

As the year came to a close, the Center for Science in the Public Interest announced a lawsuit against Nickelodeon and Kellogg's for \$2 billion dollars, alleging, among other things, that commercial tie-ins with cartoon characters like Square Pants Sponge Bob and sugary foods were making all our children fat little brats.

The prestigious Institute of Medicine, in a report issued late in 2005, calls for studies on the effects of food advertising on obesity in children, concluding that most likely there is some connection between the two. The IM report is a major blow to the industry

and its position that other forces are responsible, most notably the lack of exercise among children and the failure of parental supervision. Indeed, if advertising had such a profound effect, then obesity rates among children throughout the United States would be consistent. They are not and, in fact, vary significantly from state to state. How then can advertising be the cause?

In late 2005 Kraft announced that effective in 2006, it was revising its policy against advertising Oreos, Chips Ahoy, Kool Aid, and other sugary products to children under the age of 6 by raising the bar to children under 11 years of age. Is Kraft leading the industry in a new direction? Is Kraft's move innovative self-regulation in the face of the storm of industry-wide controversy? Or is Kraft breaking the solidarity of the industry in fighting the pundits? While interesting points to debate, one can't help but wonder how the next generation will learn how to dunk an Oreo into their glass of milk!

The FTC has been ordered by Congress to submit findings on the connection between food advertising and obesity in children by July 1, 2006. The FTC opened its docket for public comments last week, warning that mandatory submissions and subpoenas will be next.

And that's just what's happening against food advertisers.

Are you getting nostalgic for the good old 1970's yet?

Let's look at the storm beyond food.

Utah and Michigan have outlawed sending email to addresses on a special registry of children's email addresses or sending any messages to children that contain advertising or links to advertising for products and services minors are legally prohibited from buying, such as alcohol, tobacco, gambling, prescription drugs and

adult material. These laws may also apply to mainstream goods and services that can't be marketed to kids, including credit cards, hotel accommodations, automobile financing, etc. But how is an advertiser to know the age behind an email address?

The Federal Communications Commission, the United States regulator responsible for oversight of the airwaves, has been petitioned to require special disclosures whenever product placements appear in programming. Won't it be lovely to see little pop-up balloons letting the ever-ignorant consumer know that the bottle of Coke in the scene was really advertising in disguise?

Is this intelligent governance?

The Federal Trade Commission has been petitioned to rule that word of mouth advertising is inherently misleading unless it is accompanied with a disclaimer that an advertiser sponsors it. I can see it now. Motorola distributes some free phones. A lucky recipient tells a friend how much they like their new phone. I guess that's fine so long as it is immediately followed by a disclaimer like "the foregoing was a commercial announcement on behalf of Motorola. Your experience may differ."

Are consumers really that naïve? Is this an intelligent way for government to regulate the marketplace?

Last week, the FCC found a host of programming content on the screens of United States televisions indecent, including the infamous Janet Jackson wardrobe mishap in the 2005 SuperBowl. Millions in fines were levied. How will broadcasters now respond to programming ideas, let alone advertising content? Surely, the result will be a chilling effect on content and free speech. Who's to judge what's decent and what is not? Five politicians appointed by the President? I guess we should all be relieved to know the FCC remains ever vigilant in shielding us all from depravity.

Should that be the focus of the federal agency whose primary job is to keep the broadcasting arena competitive and operated in the public interest?

At the state level, the National Association of Attorneys General has established task forces specific to various industry sectors. AG's like Eliot Spitzer are particularly aggressive in addressing what they perceive to be marketplace misbehavior, often securing fines in the many millions.

Needless to say, I could go on and on with the ever-increasing threat to advertising taking place in the United States in the last two years. It is indeed the makings for a perfect storm.

And it is a storm that can only be abated by self-regulation.

The litmus test whether self-regulation will prosper and remain healthy in the United States is the upcoming re-evaluation of the rules and approach of the Children's Advertising Review Unit of the National Advertising Review Counsel. In FTC hearings in 2005, CARU was taken to task for not being effective enough in their review of children's advertising, particularly advertising for non-nutritious foods. In response, CARU put together a select panel of industry experts, including the former Director of Consumer Protection of the FTC, to re-evaluate CARU's mission and structure. Hopefully just in time for the FTC's report to Congress due on July 1, 2006.

If the CARU initiative fails and the pundits win the day with their argument that self-regulation isn't working as our children's waistlines continue to bulge, then the industry may well find itself in a terrible matrix of government regulation and oversight of advertising content unlike anything we've seen in the past. With so many people and interests jointly attacking the industry and

without the same kind of unity the industry enjoyed in the simpler 1970's, it's critical to support self-regulation and renew your vows that it is better to aggressively and creatively regulate oneself, even at the expense of some freedoms currently enjoyed, than it is to be told how to behave by legislators and regulators, often interested more in votes than fairness.

So a perfect storm is indeed approaching. Be sure you have an umbrella.

Thank you.