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Parents and Advocates Will Sue Viacom & Kellogg

*Lawsuit Aimed at Stopping Junk-Food Marketing to Children by
Kellogg and Viacom's Nickelodeon*

WASHINGTON—Parents and advocacy groups today announced their intent to file suit against Viacom and Kellogg to stop them from marketing junk food to young children. The plaintiffs contend that these two companies are directly harming kids' health since the overwhelming majority of food products they market to children are high in sugar, saturated and trans fat, or salt, or almost devoid of nutrients. They will ask a Massachusetts court to enjoin the companies from marketing junk foods to audiences where 15 percent or more of the audience is under age eight, and to cease marketing junk foods through web sites, toy giveaways, contests, and other techniques aimed at that age group.

The plaintiffs are the Center for Science in the Public Interest (CSPI), the Boston-based Campaign for a Commercial-Free Childhood, and two Massachusetts parents, Sherri Carlson of Wakefield and Andrew Leong of Brookline. Their announcement comes six weeks after a landmark report from the Institute of Medicine concluded that food advertising aimed at kids gets them to prefer—and request—foods high in calories and low in nutrients.

“Nickelodeon and Kellogg engage in business practices that literally sicken our children,” said CSPI executive director Michael F. Jacobson. “Their marketing tactics are designed to convince kids that everything they hear from their parents about food is wrong. It’s a multimedia brainwashing and re-education campaign—and a disease-promoting one at that. And parents are fed up.”

Massachusetts’ consumer protection law requires 30 days’ notice of such a lawsuit, which the plaintiffs served on the defendants today.

“As a parent, I do my best to get my kids to eat healthy foods,” said Sherri Carlson, a plaintiff and mother of three. “But then they turn on Nickelodeon and see all those enticing junk-food ads. Adding insult to injury, we enter the grocery store and see our beloved Nick characters plastered on all those junky snacks and cereals. This irresponsible marketing to young children undermines my efforts as a parent and must be stopped.”



This past fall, CSPI analyzed food advertising on Nickelodeon's televised programming and in Nickelodeon magazine and marketing on food packaging that bears Nickelodeon characters. CSPI also analyzed Kellogg's Saturday-morning television advertisements, ads in kid-targeted magazines, on-package marketing, and other media. Nickelodeon's programming is aimed at kids aged 2 to 11, according to company documents, and the Nick Jr. block of programming is aimed at kids aged 2 to 5.

Of 168 ads for food that appeared on Nickelodeon during CSPI's review, 88 percent were for foods of poor nutritional quality. The September and October issues of Nickelodeon magazine contained seven full-page food ads, all of which were for junk foods. Of 15 foods bearing Nickelodeon characters at a Washington, DC, supermarket, 60 percent were junk foods, including Fairly Odd Parents Orange & Creme Miniatures Kit Kat bars and SpongeBob SquarePants Wild Bubble Berry Pop-Tarts.

CSPI also reviewed 27.5 hours of Saturday-morning programming to analyze Kellogg marketing. CSPI found 54 Kellogg ads, 98 percent of which were for nutritionally poor foods. (Another Kellogg ad, for Apple Jacks cereal, had previously come under fire from CSPI for disparaging apples, of all things.) Of 80 Kellogg foods found in the supermarket with kid-friendly on-package marketing, 84 percent were for nutritionally poor foods. CSPI found 21 kid-friendly web sites for Kellogg products, all of which highlighted junk foods. And of 92 child-oriented branded items Kellogg had for sale on the web, 82 percent had a logo or mascot from a junk-food brand.

"The thrust of Nickelodeon's and Kellogg's likely defense will be to blame parents, since, after all, parents ultimately are responsible for their kids' diets," said CSPI litigation director Steve Gardner, lead counsel for the plaintiffs. "But then again, Kellogg and Nick aren't directing their marketing messages at parents; they're going right behind parents' backs. Parents are ultimately responsible for making sure their young kids don't get hit by cars. But if someone's recklessly driving around your neighborhood at 80 miles an hour, you're going to want to stop them."

In 1977 CSPI and Action for Children's Television first petitioned the Federal Trade Commission (FTC) to curb junk-food advertising aimed at children. The commission staff began proposing remedies, including one that would have banned *all* advertising to children, since it found that any ads aimed at young children were inherently unfair and deceptive. Broadcasters, food makers, and other companies quickly prevailed upon their congressional allies to quash the FTC's nascent effort. Now, a self-regulatory body, the Children's Advertising Review Unit (CARU), sets voluntary technical guidelines for advertising to kids and adjudicates disputes.

One former broadcasting executive, Lisa Flythe, who served as director of commercial clearances for MTV Networks and vetted ads on Nickelodeon, says CARU lacks teeth. "There are no real penalties for running afoul of CARU's guidelines, and most of their guidelines are very general," said Flythe. "Besides, CARU does not arbitrate what foods are appropriate to market to children."

One company, Kraft, has set nutritional guidelines for the foods it markets to children, and does not advertise to children under six. Although Nickelodeon has engaged in public relations activities on the issue of childhood nutrition, notably a promise to make SpongeBob and other characters available to marketers of some healthful foods, it hasn't set minimum nutrition thresholds for the foods its characters plug or that run on its station. Certainly most of the Kellogg's products that feature SpongeBob are of poor nutritional quality.

“For over thirty years, public health advocates have urged companies to stop marketing junk food to children,” said Susan Linn, co-founder of the Campaign for a Commercial-Free Childhood. “Even as rates of childhood obesity have soared, neither Viacom nor Kellogg has listened. We can no longer stand by as our children's health is sacrificed for corporate profits.”

The Massachusetts statute the plaintiffs are suing under provides for damages of \$25 per violation of unfair or deceptive advertising. In this case, a violation would occur each time that a Massachusetts child sees an ad for a junk food on Nickelodeon, sees a Kellogg junk-food ad on that or another network, or sees Kellogg junk-food packaging that bears SpongeBob SquarePants, Dora the Explorer, or other cartoon characters. If the companies go to trial and are found liable, the verdict could be in the billions of dollars, but CSPI's attorneys say the plaintiffs would settle for a commitment from the companies to change their marketing practices.

“In any other sphere of American life it would be considered creepy and predatory for adults to propose commercial transactions to toddlers and young children,” said Jacobson. “Yet companies like Kellogg, Nickelodeon, and others have been doing it with impunity, and government has done nothing for decades. This litigation is truly a last resort—and vitally important to children's health.”