

**STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE
30TH ANNUAL PROMOTION MARKETING ASSOCIATION LAW
CONFERENCE
CHICAGO, IL
NOVEMBER 20, 2008**

Thank you, Nancy Felsten, for inviting me to be here for the 30th Annual Promotion Marketing Association Law Conference. You have an ambitious agenda, and I know you will enjoy hearing from my colleague Federal Trade Commission Chairman, Bill Kovacic, tomorrow. It was 30 years ago that my own professional career first intersected with ad agencies and extraordinary creative talents, beginning with a gubernatorial campaign built around a red and black buffalo plaid shirt, to a campaign to raise children's immunization rates and later the passage of a gas tax to improve public schools.

I am also proud to say that I actually may be one of the few government officials with an "addy," an award I truly cherish. When I worked for the Governor of Tennessee, we resurrected a vintage ad from the 1970s called "TN TRASH," with a colorful country music personality driving across the state throwing out trash. We introduced an entire new generation to this character and launched environmental projects across our beautiful state. The song became such a phenomenon that it was one of the top requested songs on the radio! And, Bill Hudson and Associates and I took home an addy. We were "green" before it became "the new black." I was impressed with your session on environmental

marketing. In fact, I have an op-ed on how ICT is part of the solution to the energy crisis—from improving productivity, to telecommuting, to energy-saving devices.

I would like to take this opportunity to thank you all for the proactive steps that you, and your companies and clients, have taken to address the critical issues facing America's children and youth – from the war on drugs, to buckling up our seatbelts, to the more recent national epidemic of childhood obesity. And, of course, the political ads that have dominated the airwaves for more than a year—they may at times be humorous or even inflammatory, but they are also the means by which the vast majority of Americans receive information about the candidates.

I. Economy

The advertising industry has had, and will continue to have, a profound effect on our country-- not only from a creative standpoint, but also an economic one. At a time when our country's economy is struggling and we are in a historic downturn, your sector continues to explore new business models, and new ways of sustaining old models in an ever-changing digital world. At last month's Association of National Advertisers' conference, a survey of the top 1200 advertising and marketing executives revealed that 26% plan to increase ad spending by more than 10% next year, and 28% plan to hold spending stable. In *The Wall Street Journal* yesterday a creative employee exchange between Proctor & Gamble, the largest U.S. advertiser, and Google was highlighted. You may

want to suggest this innovative initiative to your clients, and I commend this visionary approach. This is not to discount the effect the downturn has had on your industry—another ANA survey done in August showed that out of 100 advertisers, 87% said they were looking for cost savings and reductions—but you have clearly weathered the storm, in large part due to the critical role you play in jumpstarting confidence and spending, and thus in our overall economy.

Marketing continues to serve as an important economic support for free services consumers demand. From broadcast television, to search engines like Google and Yahoo, to the new free 4-1-1 directory assistance, ads make new and old technologies available to millions of Americans at a fraction of the cost.

You will need to continue to evolve with technology. For instance, in the gaming environment, 45% are mobile players. Mobile gaming is puzzle- and strategy-based, which is totally different from how consumers play games on their PC, game console, or television. You will need to be aware not only of the different content and technologies, but also how they are being used by consumers. Internet TV has been a huge-- and somewhat surprising-- success. Of Hulu, NBC's Digital President said, "Multiple platform exploitation is raising the audience versus cannibalizing it." Multiple platforms underscore reaching different audiences. For instance, on television, "How I Met Your Mother" attracts a median age of mid-40s, while online the show has a media age of 28. The good

news is that you can have the same message, but need to differentiate content by platform.

II. Product Placement

I know that one issue at the top of your agendas is that of product placement, or sponsorship ID. This issue has arisen, in my opinion, because of your industry's innovative ability to adapt to market changes. With the development of DVRs and TiVo, viewers are able to record their favorite shows and watch them without commercial breaks, resulting in a decline in advertising penetration. Thus, your industry responded by embedding ads and product placements in the plotlines or sets of popular television shows. Of course, this is certainly nothing new-- from the 1920's Palmolive "soap operas" to the Hallmark Channel to Martha White's Grand Ole Opry. Some consumer groups, and perhaps some at the Commission, believe that the American public needs government protection from this practice-- in the form of more visible and immediate messages such as crawls across the screen whenever a product appears (for which there has been payment). In response to these concerns, the Commission has before us a Notice of Proposed Rulemaking which would solicit comment from the public and industry on whether the Commission's sponsorship identification rules are in need of modification. With the end of this term drawing near, I suspect that it is unlikely we will vote on the Notice this year. However, I hope that you will all continue to monitor the

situation and weigh in with comments at the appropriate time. Perhaps a voluntary trial could be utilized with real consumer comments being measured. I'm not sure most viewers want any more clutter or distracting crawls during their favorite TV shows-- although products might be getting even more bites at the consumer. But stay tuned!

III. Mobile Advertising

Another way the advertising industry is adapting to the changes in communication is not only by going online—but going mobile. Internet advertising revenue has risen from less than \$1 billion in 1997 to \$16.9 billion in 2006-- and it's projected to reach \$27.5 billion in 2008. Over the past four years, Internet advertising has grown between 20-34% each year, while TV and radio have seen virtually no growth and newspaper ad dollars have declined. Internet advertising is now a multibillion dollar a year business, and it's not just national advertisers that are sharing in the profits. Local advertisers are turning to the internet as well. As Analyst Gordon Burrell recently pointed out, "There is tremendous growth in local online advertising, whether web advertising or search advertising. In 2007, \$8.7 billion was spent by local advertisers."

As you have already realized, advertising must go mobile. CBS executive Cyriac Roeding said recently, mobile is the only medium that people carry with them 18 hours a day—in my case, make that 24 hours a day! As NBC's president

for integrated media, Beth Comstock, puts it, “Video has been liberated” from the television set and the living room. We are seeing more and more content delivered via mobile devices. And with our recent auctions of even more “beachfront” spectrum, there will be an explosion of even more new technologies and platforms.

IV. Behavioral Ads

Another new frontier in the online advertising world is behavioral ads. I’m sure you have all heard of NebuAd, which started last fall and has been the subject of much controversy in recent months. Concerns about privacy have led the CEO of NebuAd to continually assure Americans that the service does not track names, addresses, or credit card numbers. However this has not stopped many ISPs from declining to do business with NebuAd.

For advertisers, the benefits are clear—the ability to tailor your message to an audience that you know is listening. Naturally, there are still some kinks that must be worked out—for example, two or three individuals may use the same computer, and thus have the same IP address. Because information is tracked based on IP address, there is no way to ensure which actual user is seeing the ad. Thus, an ad sent to target a father, because he has been online looking at Ford trucks, may instead be seen by his ten-year-old daughter. On the flip side, by tracking IP addresses, rather than specific individuals, a level of privacy is protected. In the U.K., British Telecom started a trial last month, allowing

broadband customers to “opt-in” to targeted advertising, suggesting this is a premium service that actually personalizes the online experience. I look forward to the results of this trial.

In July, the U.S. House Commerce Committee examined issues surrounding behavioral ads as part of a larger hearing on “What Your Broadband Provider Knows about Your Web Use.” Congressman Markey again stressed the need for privacy protections in this new era of communications technology, and even called for a privacy Bill of Rights for internet users. I think you should all be prepared for additional Congressional interest and possibly even legislation.

V. Privacy

As ads become more and more targeted, based on your purchases, and mobile advertising becomes more prevalent, privacy concerns will undoubtedly continue to grow. We have already seen the coupons on our grocery receipts morph into online coupons, and even realize the potential of receiving an ad or a coupon while driving by a favorite restaurant or retail store. Like most consumers, I welcome the idea of receiving ads only for those products I am most interested in. However, I do not welcome the idea of someone tracking my every move, purchase, website I visit, or my mobile location—known as “location awareness.” The advertising industry bears the difficult burden of weighing these interests. As a legal matter you must balance an individual’s right to privacy against corporate

America's right to commercial speech. I expect that the next few years will see a great deal of effort-- from industry, Congress-- even state the legislatures-- and then the courts, spent crafting policies to deal with this confluence of ideals as technology becomes more and more sophisticated.

VI. Children

I can't conclude today without a plea for your continued consideration of the content of ads directed toward our children. We see cell phones being marketed to pre-schoolers—even though studies show that children cannot understand the persuasive quality of ads until they are eight years old. So why advertise to them? Of course the answer is: because it works. But is it fair? In several European countries ads targeting children under twelve are completely banned. (U.K., Sweden, Norway) While I'm not necessarily suggesting this approach here in the U.S., I do believe that those wishing to market their products to our children bear a responsibility. For example, with 40-50% of teenagers carrying a cell phone, and cell phones now serving as an on-ramp to the Internet, I believe those who market cell phones have a duty to warn parents and children about online dangers. DOCOMO, the largest Japanese cell phone provider has actually developed an internet safety curriculum, which they provide to teachers and students, explaining the threats lurking online and how to avoid them.

Throughout my time at the Commission, I have continually sought to encourage voluntary, industry self-regulation and develop marketplace solutions—often through non-traditional partnerships. For example, regarding childhood obesity— an epidemic which affects nearly ten million children-- in 2006, a bipartisan, interagency coalition of government officials formed the Joint Task Force on Media and Childhood Obesity. I was pleased to participate in the establishment of this Task Force, along with FCC Chairman Kevin Martin and Commissioner Michael Copps, and U.S. Senators Sam Brownback and Tom Harkin. The Task Force brought together a cross-section of leaders in the media, advertising, food and beverage sectors, as well as child advocacy organizations to develop real-world, voluntary solutions. Along with the Council of Better Business Bureau's (CBBB) (under the auspices of the FTC) Children's Food and Beverage Advertising Initiative, we encouraged all of these sectors to reduce the number and type of ads for unhealthy foods that target our children. According to an American Psychological Association (APA) report led by Professor Dale Kunkel, the average American child sees 40,000 television commercials each year, the vast majority of which are for sugary cereals, soda, and candy. Therefore, a more balanced ratio of healthy to unhealthy food advertising should have a profound and positive impact. Let me applaud the fifteen largest food and beverage companies, which have pledged that at least 50% of their advertisements directed to children under 12 will

be for “better-for-you” foods. In fact, thirteen of those companies pledged to advertise **only** “better-for-you” foods to children. They also adopted a truly historic pledge to reduce the use of licensed characters. Several companies such as Kellogg, Proctor & Gamble, and Kraft are working to reformulate some of their products, raising the percentage of whole grains and lowering the sugar and salt content.

Media companies including Sesame Street, Disney, Discovery Kids, Nickelodeon, and The Cartoon Network, have agreed to ban the use of all of their loveable characters in ads for unhealthy foods. As a mom, I know how hard it is to compete with Elmo or Sponge Bob. Disney has even implemented healthy initiatives from its theme parks to its employee cafeterias. These companies are true industry leaders, and I am grateful for their early adoption of these initiatives. I also want to commend Ion Media and Veggie Tales, produced in my hometown of Nashville, Tennessee, for pledging to totally ban all ads for unhealthy foods on their network. And I challenge those of you who represent the food industry or media companies to sign on to a food pledge with CBBB and to publicly endorse and announce a policy not to use characters in ads for unhealthy products. This is not only the right thing to do, it will also provide unearned media for your client and increase sales opportunities. And, given the recent trend towards regulation--from the U.K., which banned all ads targeting children under 12, to many city and

state laws, such as the law recently signed by Governor Schwarzenegger requiring calorie information on restaurant menus in California—advertisers would be wise to consider pro-active, voluntary steps. Likewise, the National Governors’ Association and many individual governors are becoming more and more active in attacking obesity as the impact on state healthcare budgets is making this a necessity. Arkansas, once the fattest state in the Union, has in just three years, seen obesity rates level off and even decline slightly. In twenty-three states, obesity-related healthcare costs top \$1 billion per year-- up to 10% of which are direct expenditures by Medicare and Medicaid. Again, I encourage you to have your clients come up with voluntary ways to assist in these initiatives so that you or your clients do not become the star witnesses for hearings, litigation, and regulatory action. As healthcare costs take center stage in the new administration, take note of the tobacco settlement and take self-regulatory action now.

Please encourage your food and beverage clients to follow Disney’s lead and make the healthy choice the default choice. If “thin is in,” use your influence to say that super-sizing is super-last year; and offer fruit instead of fries.

Each of you, and your industry, has a part to play in the future of America’s children. Programs such as the NFL Networks’ and Cox Communications’ “Keep Gym in School” which targets inner city schools and provides PE using the persuasiveness of NFL players; the YMCA’s “Activate America”; Discovery

Health's National Body Challenge; entire shows like NBC's "The Biggest Loser" are all motivating Americans to engage in healthy eating and active lifestyles. As I continue to remind advertisers, this is not just good for children and families; it's also good for the bottom line -- for your client and their ad budget!

VII. Conclusion

I urge you to use your extraordinary creative talents to engage our children with messages emphasizing healthy, active lifestyles, and products that contribute positive messaging. Thank you for all that you are doing to educate, entertain, and inform us—from the DTV transition to the importance of health care screenings, to teaching our children about the dangers lurking online.

As a "humble regulator," one who believes in industry self-regulatory efforts and marketplace solutions, as well as the mother of an "ad man," I challenge you to regale us with humor, spark our interest with your creativity, and help Americans—particularly our children—be the best, healthiest, most well-informed citizens we can be. Thank you.