

PEPSICO AND PUBLIC HEALTH: IS THE NATION'S LARGEST FOOD COMPANY A MODEL OF CORPORATE RESPONSIBILITY OR MASTER OF PUBLIC RELATIONS?

By Michele Simon†

INTRODUCTION

While most people just think of soda when they hear the name Pepsi, the multinational conglomerate called PepsiCo is actually the largest food company in the United States and second largest in the world (Nestlé is number one).¹ PepsiCo's dizzying reach extends far beyond just fizzy sodas. Formed in 1965 through a merger of Pepsi-Cola with Frito-Lay, the company's marriage of salty snacks with soft drinks has been key to the company's success, and sets it apart from industry competitor Coca-Cola, which still only owns beverages.²

Over the past decade, many questions have been raised about the role of the food industry in contributing to a marketing environment in which unhealthy beverages and snacks have become the norm. While industry responses have come in various forms, PepsiCo stands out, at least in terms of public relations. The company prides itself on being a leader in corporate social responsibility. The goal of this article is to take a closer look at what the company says it's doing, what it's actually doing, and the broader context for these actions.

By any measure of good health, sugary beverages and salty snacks are not exactly "part of a balanced diet," at least not on a regular basis. Add to that increasing pressures in schools and local communities to reduce or eliminate junk food marketing to children,³ and it becomes clear that a company like PepsiCo has a pretty serious public relations challenge on its hands.

† Michele Simon is a public health attorney and author of *Appetite for Profit: How the Food Industry Undermines Our Health and How to Fight Back*. She is also the President of Eat Drink Politics, a consulting business on countering corporate harm to improve public health.

¹ John Seabrook, *Snacks for a Fat Planet*, THE NEW YORKER, May 16, 2011, at 54.

² *Our History*, PEPSICO, <http://www.pepsico.com/Company/Our-History.html> (click "1965" on timeline) (last visited Jan. 2, 2012).

³ See, e.g., Gardiner Harris, *A Federal Effort to Push Junk Food Out of Schools*, N.Y. TIMES, Feb. 7, 2010, at A14; Kim Severson, *Effort to Limit Junk Food in Schools Faces Hurdles*, N.Y. TIMES, Dec. 2, 2007, at A32.

PEPSICO'S PERFORMANCE WITH PURPOSE

It's difficult to comprehend the enormity of this company. PepsiCo's total net revenue in 2010 was more than \$57 billion, with profits topping \$10 billion.⁴ Often figures are easier to place into context when they are broken down. Here are the company's revenues for a few of its divisions.⁵

PepsiCo Division	2010 Revenue
PepsiCo Americas Beverages (includes Pepsi-Cola, Gatorade, and Tropicana brands)	\$20.4 billion
Frito-Lay North America	\$13 billion
Quaker Foods North America	\$1.8 billion
Latin American foods	\$6.3 billion
Europe	\$9 billion
Asia, Middle East and Africa	\$6.6 billion

To fully understand how the company is structured, you have to think of PepsiCo as not just a soda and snack company, but broken down into its five core divisions, organized by brands: Pepsi-Cola; Frito-Lay; Tropicana; Quaker; and Gatorade.⁶ Total marketing expenditures, which include the costs of advertising and other marketing activities, totaled \$3.4 billion in 2010.⁷

Since becoming CEO in 2006, Indra Nooyi has become something of a corporate superstar, recognized with numerous awards (including "CEO of the year") and in many publications both in the U.S. and in her native India.⁸ Her claim to fame is largely based on the company's positioning itself as a national leader in "corporate social responsibility" in general and as it specifically relates to health and nutrition. The company touts its "Performance with Purpose," which consists of a series of "commitments" in three areas: health; the environment; and company employees.⁹

Given the criticism the company has come under for selling products like Mountain Dew and Cheetos (among many other brands), PepsiCo needs to at least appear to be making some

⁴ PEPSICO, PERFORMANCE WITH PURPOSE: THE PROMISE OF PEPSICO, PEPSICO 2010 ANNUAL REPORT 15 (2010), available at http://www.pepsico.com/Download/PepsiCo_Annual_Report_2010_Full_Annual_Report.pdf.

⁵ *Id.* at 65.

⁶ See *Brands*, PEPSICO, <http://pepsico.com/Brands.html> (last visited Dec. 21, 2011).

⁷ PEPSICO, *supra* note 4, at 80.

⁸ See *e.g.* Global Leaders Group, GLOBAL SUPPLY CHAIN REV., July 2009, at 3.

⁹ PEPSICO, *supra* note 4, at 10.

changes. Some of the company's stated commitments with respect to its products are to:

- Provide more food and beverage choices made with wholesome ingredients that contribute to healthier eating and drinking.
- Increase the amount of whole grains, fruits, vegetables, nuts, seeds, and low-fat dairy in our global product portfolio.
- Reduce the average amount of sodium per serving in key global food brands, in key countries, by 25% by 2015, with a 2006 baseline.
- Reduce the average amount of saturated fat per serving in key global food brands, in key countries, by 15% by 2020, with a 2006 baseline.
- Reduce the average amount of added sugar per serving in key global beverage brands, in key countries, by 25% by 2020, with a 2006 baseline.¹⁰

While these certainly sound like worthy goals, much of the language is vague and questions loom regarding accountability and evaluation. For example, the pledges to reduce sodium, saturated fat, and added sugar are only “in key global food brands” and “in key countries.” Which ones are “key”? Also, PepsiCo is in charge of measuring any progress the company is making toward these goals. In its 2010 annual report, PepsiCo uses more vague language to show off how well they are doing in each category. For example, sweetened beverages have come under a lot of scrutiny for causing health problems. Here is an excerpt from how PepsiCo is reporting its progress on this issue:

While reducing added sugars in beverages is challenging—due to strong consumer taste preferences for sugar and complex regulatory processes for alternatives—we have set aggressive goals and are making progress toward achieving our 25 percent reduction target by 2020.¹¹

No wonder it's a challenge when companies like PepsiCo have convinced Americans to drink soda and other sugary beverages instead of water. Complaining about “complex regulatory processes” is a way to excuse inaction.

No further details are given, except that the company is hard at work to develop “an all-natural sweetener designed to replicate the taste and feel of sugar.”¹² In other words, the solution is more

¹⁰ *Human Sustainability*, PEPSICO, <http://www.pepsico.eu/purpose/human-sustainability> (last visited Dec. 21, 2011).

¹¹ PEPSICO, *supra* note 4, at 28–29.

¹² *Id.* at 29.

technology when the healthiest thing people could do is replace all bottled beverages with tap water. But a company that makes \$20 billion annually selling beverages can't exactly say that.

Given the public outcry regarding marketing to children, especially in the school setting, PepsiCo has also made the following commitments under "marketplace."

Encourage people to make informed choices and live healthier.

- Display calorie count and key nutrients on our food and beverage packaging by 2012.
- Advertise to children under 12 only products that meet our global science-based nutrition standards.
- Eliminate the direct sale of full-sugar soft drinks to primary and secondary schools around the globe by 2012.
- Increase the range of foods and beverages that offer solutions for managing calories, like portion sizes.¹³

More vague and self-serving language here, including the promise to only advertise to children under 12 "products that meet our global science-based nutrition standards." Trouble is that PepsiCo gets to decide the science—a company that has a vested interest in the outcome of that science. And what about the progress being made? More vague language from the annual report:

For example, between 2006 and 2009, we voluntarily discontinued *direct sales* of full-sugar soft drinks to K–12 schools in the U.S. and replaced them with *smaller-portioned and lower-calorie beverage options*. We also do not sell full-sugar soft drinks *directly to primary and, in some cases, secondary schools in most of Europe, Canada, Australia and the majority of countries in the Arabian Peninsula* (emphasis added).¹⁴

It's unclear exactly what the phrases in italics mean and how these qualifiers undercut the specifics and the spirit of the commitments. The bottom line is that PepsiCo is in charge of everything: of what sort of changes they commit to, of how any progress is evaluated and of course, how the results are reported.

SPINNING THE PRODUCT PORTFOLIO

When it comes to claims of caring about people's health and offering "wholesome foods and beverages,"¹⁵ PepsiCo has a huge challenge on its hands. Most of the corporate profits come from selling the very products that Americans need to be eating less of:

¹³ *Id.*

¹⁴ *Id.* at 30.

¹⁵ *Id.* at 2.

nutritionally deficient sugar-loaded soft drinks and salty, fatty snacks. But PepsiCo has realized that by creating a continuum of “healthiness” in which the entire universe is defined by the company’s own products, this public relations problem could be overcome. Enter PepsiCo-speak.

The company prides itself on a wide portfolio of products that are broken down into a trio of spin-centric “good-for-you,” “better-for-you,” and “fun-for-you” products, as described by PepsiCo CEO Indra Nooyi in an interview with *Fortune*.¹⁶ According to Nooyi, the “fun-for-you” products include full-octane brands such as Pepsi and Mountain Dew, Doritos and Lays, while the “better-for-you” category is comprised of allegedly healthier options including Diet Pepsi, Baked Lays, and SoBe Lifewater. Rounding out the portfolio trifecta are the “good-for-you” choices from the company’s Quaker, Tropicana, Naked Juice, and Gatorade lines.¹⁷

In the world of PepsiCo nutrition, drinks like Diet Pepsi are “better-for-you” because they have zero calories. But that’s hardly a measure of good nutrition. Marion Nestle, Paulette Goddard Professor in the Department of Nutrition, Food Studies, and Public Health at New York University and author of *Food Politics* (among other books) is unimpressed with PepsiCo’s three-tiered approach:

PepsiCo is leading the way to find health reasons to sell junk food. “Fun-for-you” is a brilliant way to spin “bad-for-you.” “Better-for-you” raises the question, better than what? It’s great the company isn’t claiming these products are health foods but I think PepsiCo is on a slippery slope in these categories.¹⁸

Also, that Nooyi places the entire line of Gatorade products in the “good-for-you” category is especially troubling. Most health experts say that except for marathon runners and tri-athletes, the made-up category of “sports drinks”—mostly sugar water with artificial coloring—is really unnecessary.¹⁹ Even worse, to promote these products in schools, where kids are barely getting any exercise these days, is downright shameful. As Professor Nestle put it, “Since when is Gatorade equivalent to orange juice in its health benefits?”²⁰

¹⁶ JP Mangalindan, *PepsiCo CEO: “If All Consumers Exercised . . . Obesity Wouldn’t Exist,”* FORTUNE (Apr. 27, 2010, 1:02 PM ET), http://money.cnn.com/2010/04/27/news/companies/indra_nooyi_pepsico.fortune/index.htm.

¹⁷ *Id.*

¹⁸ Michele Simon, *Pepsi Teams Up with White House to Whitewash Worthless Snacks and Sodas*, ALTERNET (June 2, 2010), http://www.alternet.org/health/147064/pepsi_teams_up_with_white_house_to_whitewash_worthless_snacks_and_sodas/.

¹⁹ See Marcie Beth Schneider et al., *Clinical Report—Sports Drinks and Energy Drinks for Children and Adolescents: Are They Appropriate?*, 127 PEDIATRICS 1182 (2011).

²⁰ Marion Nestle, *Pepsi’s Answer to “Eat Natural”: Snackify Beverages and Drinkify*

Nooyi also admits that right now, the portfolio is only 20% “good for you” but she sees “growth” in that category. Still, she also refers to the other 80% as the “core” brands of the company that they need to focus on.²¹

Nooyi says the company is putting more R&D dollars behind developing additional “good-for-you” products and is “investing in new sweeteners and salt-reduction technologies to make our ‘fun-for-you’ products better for you.”²² In other words, the company is hard at work trying to engineer healthy Cheetos.

The economic goal is to increase the current \$10 billion in revenues from “good-for-you” products to \$30 billion over the next decade. Nooyi explains that the company will achieve this in part with “fruit and vegetable offered in different forms, whole grains or any other sort of super grains.”²³ How exactly, does a processed food company accomplish this? Nooyi explains in more Pepsi-speak: “We see the emerging opportunity to ‘snackify’ beverages and ‘drinkify’ snacks as the next frontier in food and beverage convenience.”²⁴

In an amalgam of the two, in early 2011, the company released a new product called “Tropicana Tropolis”—squeezable fruit, designed to “squeeze more fruit into kid’s daily diets.”²⁵ But nutrition expert Marion Nestle is not impressed. She describes it as, “watery apple and banana sauce, artificially thickened, sweetened with fruit sugars, flavored with additives, and with added vitamin C” and concludes that “kids would be better off eating an apple or a banana.”²⁶

LAY’S CHIPS: FARMWASHING?

While total Lay’s sales topped \$2 billion in 2009, growth—the key to continued success—was down in 2010. According to the *New York Times*: “Sales growth for Lay’s had slowed to less than 1 per-

Snacks, FOOD POLITICS (Jan. 5, 2011), [http://www.foodpolitics.com/2011/01/pepsi's-answer-to-“eat-natural”-snackify-beverages-and-drinkify-snacks/](http://www.foodpolitics.com/2011/01/pepsi's-answer-to-\).

²¹ *Fareed Zakaria GPS: Interview with Indra Nooyi* (CNN television broadcast Apr. 17, 2011), <http://transcripts.cnn.com/TRANSCRIPTS/1104/17/fzgps.01.html>.

²² Mangalindan, *supra* note 16.

²³ *Id.*

²⁴ Valerie Bauerlein, *PepsiCo’s Latest Challenge: ‘Snackify’ Some Beverages*, WALL ST. J., Dec. 29, 2010, at B1.

²⁵ Press Release, Tropicana Products Inc., Tropicana Introduces Tropicana Tropolis(TM) to Squeeze More Fruit into Kids’ Daily Diets (Dec. 16, 2010), *available at* <http://www.pepsico.com/PressRelease/Tropicana-Introduces-Tropicana-TropolisTM-to-Squeeze-More-Fruit-into-Kids-Daily-12162010.html>.

²⁶ Nestle, *supra* note 20.

cent from 2005 to 2007, raising concern among executives at Frito-Lay as well as PepsiCo.”²⁷ Translation: the company is worried and looking for new ways to greenwash its products.

And no wonder, with the growth of the local food movement, an increasing segment of the population is concerned with where their food comes from. This is another public relations headache for a multinational company whose business model doesn’t exactly lend itself to having booths at your local farmers market. But PepsiCo PR professionals are all over that problem with, what else? An ad campaign. Marion Nestle aptly describes it as “farmwashing.”²⁸

Not wanting to miss out on the current “love your local farmer” movement, the campaign featured ads of regional farmers in local markets, along with an online “Happiness Exhibit” photo gallery at lays.com. The addition of farmers to the ad campaign is an aim, says Gannon Jones, vice president for portfolio marketing at Frito-Lay, “to put the hometown face on it, and the hometown face is our farmers.”²⁹

But how come the company didn’t put the “hometown face” of the local factory workers who pulverize the potatoes, and then douse the mixture in salt along with many gallons of (“all-natural”) oil. Or the other numerous local factory workers who must work very hard turning those “simple ingredients” into fried chips. Then there are even more local factory workers on the assembly line where all of those many chips are put into bags.

They also left out the local factory workers who put the bags into boxes, seal the boxes and get them ready to leave the factories. And who can forget all the local truckers who have to drive the big trucks to the regional distribution centers before they can be delivered by yet other local truck drivers to all those local stores. Nope, just focus on the local farmers. Wonder why?

CO-OPTING SCIENCE AND HEALTH PROFESSIONALS

Shaking the foundations of sound policy-making in attempts to control the scientific discourse on nutrition and health is a well-honed strategy of the food industry. While the tactic takes numerous forms, its goals are always the same, to: (1) cast doubt on

²⁷ Stuart Eliot, *Promoting a Potato Chip Using Many Farmers, and Less Salt*, N.Y. TIMES, May 26, 2010, at B1.

²⁸ Michele Simon, *PepsiCo’s Latest “Local” Ad Campaign for Lay’s Reveals that Potato Chips Come from . . . Potatoes!*, APPETITE FOR PROFIT (May 28, 2010), <http://www.appetiteforprofit.com/2010/05/28/pepsicos-latest-local-ad-campaign-for-lays-reveals-that-potato-chips-come-from-potatoes/>.

²⁹ Eliot, *supra* note 27.

findings that might threaten financial interests; (2) position food makers' own (biased) contributions to the scientific debate as legitimate and authoritative; (3) co-opt experts who would otherwise be critical of business practices; and (4) ensure ultimately that people continue to consume food companies' unhealthy products.

While plenty of other food companies are attempting to healthwash their junk food products and menu items, PepsiCo has emerged as the industry leader in the cooptation of health professionals. The company has an entire department with the official sounding name of "Global Health Policy."³⁰ At the helm is a public health professional who once worked for a much more prestigious institution: The World Health Organization.

Ask anyone who's been in the public health field for at least ten years if they've heard of Derek Yach, and the response is likely to be: "Of course, he's a public health hero."³¹ But when the news came, in 2007, that one of the world's most respected public health experts went to work for PepsiCo, many were shocked.³²

It was a personnel coup for PepsiCo whose new director of global health policy came with a pedigree the company must have been salivating over. A native of South Africa where he did his medical training, Yach established the Center for Epidemiologic Research at the South African Medical Research Council. But he earned his global health hero reputation as Representative of the Director General at the World Health Organization. There, he helped cement the Framework Convention on Tobacco Control, an unprecedented global treaty that pitted Yach against the world's most powerful tobacco industry leaders.

While at WHO, Yach also became embroiled in food issues, at times finding himself at odds with Big Food. Indeed, his willingness to speak out about food politics ultimately led to his downfall at WHO, which only furthered his public health hero status. Ironically, though, it was when he later joined Kelly Brownell's team at the Rudd Center for Food Policy and Obesity at Yale University that things went downhill. Yach left Rudd for a brief stint at the Rockefeller Foundation before joining PepsiCo in 2007.

³⁰ Press Release, PepsiCo, PepsiCo Appoints Derek Yach As Director – Global Health Policy (Feb. 8, 2007), *available at* http://www.redorbit.com/news/health/832479/pepsico_appoints_derek_yach_as_director_global_health_policy/.

³¹ See e.g. Michele Simon, *How Junk Food Giant PepsiCo Is Buying Up High-Ranking Experts to Look Like a Leader in Health and Nutrition*, ALTERNET (Aug. 5, 2010), http://www.alternet.org/food/147738/how_junk_food_giant_pepsico_is_buying_up_high-ranking_experts_to_look_like_a_leader_in_health_and_nutrition/?page=2n.

³² *Id.*

New York University Professor Marion Nestle, author of *Food Politics*, offers her take on what happened:

I first met Derek Yach when he was a public health hero at WHO for his efforts to get food companies to stop marketing junk foods to kids and to stop lobbying against proposed WHO advice to restrict sugars. He lost on both counts, but not for lack of trying. He must have decided that outside advocates can't get anywhere with food companies and that change has to come from within. I'm dubious that meaningful changes from within are possible for a company that makes most of its money selling sodas and potato chips, but that's just me.³³

PepsiCo has placed other health experts on its payroll for similar reasons. Just a few months after Yach was hired, PepsiCo tapped Dr. Mehmood Kahn also for the newly created position of "Chief Scientific Officer." Kahn worked at the Mayo Clinic and also served as division chief of endocrinology, metabolism and nutrition at the University of Minnesota Medical School.³⁴

But PepsiCo did not stop there. PepsiCo plucked its latest plum from the tried and true depository of scientific experts: the U.S. government. In late 2009, Dr. George Mensah became PepsiCo's "Director of Heart Health and Global Health Policy." Previously, Dr. Mensah, a native of Ghana, spent nearly a decade with the U.S. Centers for Disease Control and Prevention, helping lead the federal agency's efforts to fight strokes, heart attacks, heart disease and colorectal cancer.³⁵ But his government career got trumped by Cheetos.

In a 2010 interview, Dr. Mensah explained his decision to work for PepsiCo: "The real role we play is to use the best science available to make sure everything we do supports our customers. I don't feel like I've left public health."³⁶ And why should he, when he is surrounded by other doctors? Great strategy: Create a research environment where scientists don't feel out of place so they forget they're working for a company that profits from the sales of salt, sugar, and fat.

To recap: Since 2007, PepsiCo has hired at least three noted

³³ *Id.*

³⁴ Press Release, PepsiCo, PepsiCo Names Dr. Mehmood Khan Chief Scientific Officer (Dec. 12, 2007), *available at* http://www.redorbit.com/news/health/1180054/pepsico_names_dr_mehmood_khan_chief_scientific_officer.

³⁵ Jeremiah McWilliams, *Whatever Happened to . . . George Mensah?*, AJC.COM (ATLANTA JOURNAL-CONSTITUTION) (May 14, 2010, 5:00 p.m.), <http://www.ajc.com/business/whatever-happened-to-george-527595.html>.

³⁶ *Id.*

international experts in medicine, science, and public health. Their pedigrees span the world's premier public health organization, America's top public health governmental agency and the most respected medical and research academic institutions.

FINDING SCIENTIFIC VEHICLES FOR THE CORPORATE MESSAGE

Another disturbing sign that PepsiCo was coopting the scientific conversation around public health and diet came in 2010 when CEO Indra Nooyi succeeded in infiltrating one of the nation's most respected annual reports on obesity. For the past eight years, a nonprofit called Trust for America's Health (TFAH) has published a report called *F as in Fat*, which updates the grim obesity statistics from around the nation, culling information mostly from respectable government sources. In the 2010 edition, right in the middle of the sobering data and potential policy solutions came an unexpected new entry: a two-page missive penned by Indra Nooyi herself. As you might expect, it reads more like a press release than scientific analysis: "We firmly believe companies have a responsibility to provide consumers with more information and more choices so they can make better decisions," Nooyi wrote.³⁷

Even more troubling, this report is co-published by its funder, the Robert Wood Johnson Foundation (RWJF), the nation's largest health care foundation. One of RWJF's most ambitious goals is to "reverse the childhood obesity epidemic by 2015." Why is PepsiCo infiltrating what used to be neutral reports from the Trust for American Health and the Robert Wood Johnson Foundation?

Laura Segal, spokesperson for the Trust for America's Health, says that having PepsiCo CEO Nooyi's comments in the report was an innocent attempt to have the "industry perspective" and not the result of any shady financial relationship. "We reached out to a number of companies and Pepsi was the first one to respond. We want to represent a range of opinions and the industry segment is a significant component of dealing with obesity," says Segal.³⁸

In contrast, Harold Goldstein, executive director of the California Center for Public Health Advocacy, notes what Nooyi conveniently left out:

³⁷ TRUST FOR AMERICA'S HEALTH, *F IS FOR FAT* 44–45 (2010), available at <http://healthyamericans.org/reports/obesity2010/Obesity2010Report.pdf>.

³⁸ Melanie Warner, *Obesity Report Chronicles the Sad State of America's Waistline—and Tells Us How Great PepsiCo Is*, CBS MONEYWATCH (July 1, 2010, 6:30 AM), <http://www.bnet.com/blog/food-industry/obesity-report-chronicles-the-sad-state-of-americas-waistline-8212-and-tells-us-how-great-pepsico-is/1129>.

She doesn't mention the highly sophisticated multimillion dollar national marketing and lobbying campaign they have undertaken to promote themselves as good corporate citizens and undermine efforts to establish state and local policies to reduce consumption of sugar-sweetened beverages, which have been the single leading contributor to the obesity epidemic.³⁹

In other words, when food companies such as PepsiCo (even when speaking through their own scientific experts) opine on a major public health problem, we are not about to hear the entire story, but rather one filtered through the corporate agenda, which by definition must promote its bottom line, and thus omit the less flattering aspects.

That's why no matter how many MDs or PhDs the company hires, or how many public health reports it infiltrates, PepsiCo should never be looked to as an expert on anything other than what it does best: marketing and selling highly processed food and beverage products to the world.

In the right hands, science plays a critical role in public policy debates. We need to rely on credible science for sound decision making. So it's critical that scientific research remain unfettered by corporate interests. As more and more health experts and organizations slide down the slippery slope of accepting corporate funding, we will ultimately lose a critical tool for effective policymaking.

PHILANTHROPY DISGUISED AS MARKETING

While most large corporations engage in some form of philanthropy, PepsiCo has demonstrated remarkable skill in this department as well. And what better place to show how much the company cares than in schools? Schools have become especially controversial in the food debate because of concerns that corporations should not be targeting children in a learning (and captive) environment.

For example, in 2010, PepsiCo's Frito-Lay North America infiltrated high school football season with its "Score for Your School" program for Texans that invited fans to help schools win up to a \$10,000 donation for their sports programs. Texans could visit www.scoreforyourschool.com, enter the 9-digit product code from any Frito-Lay product (chips, dips, salsa and more) and then select the Texas high school of their choice.⁴⁰ This is branding disguised as philanthropy.

³⁹ Simon, *supra* note 31.

⁴⁰ Michele Simon, *Back to School with PepsiCo Stealth Marketing?*, APPETITE FOR

For the past couple of years, the company has been gaining much positive PR with its ubiquitous Pepsi Refresh donation program.⁴¹ In 2010, a parochial elementary school in Alton, Illinois held a “thank you assembly” for Pepsi employees after the school won a Refresh Everything grant of \$25,000 to purchase computers.⁴² An article describing the event showed the image of adorable six-year-old Matthew Dixon holding a “thank-you Pepsi” sign.⁴³ This is the same company that has pledged to “[e]liminate the direct sale of full-sugar soft drinks to primary and secondary schools around the globe by 2012.”⁴⁴

The local reporter explains how the youngsters showed Pepsi employees their gratitude:

The entire school signed a large, thank-you poster, and the younger students made individual thank-you drawings in red, white and blue, *the soda brand’s colors* (emphasis added). Teachers wore turquoise shirts that read, “Every Pepsi Refreshes the World,” and the children pinned on Pepsi buttons . . . The highlight of the 15-minute assembly in the gymnasium came when Father Delix Michel riled up the youngsters with a T-shirt toss. Similar to professional baseball games—but minus the sling-shot—Michel showed a good pitching arm as he deftly threw Pepsi shirts to all areas where students were sitting, including landing one shirt in the back row. Some of the shirts landed in the students’ laps.⁴⁵

A priest handing out Pepsi T-shirts, it doesn’t get any better than that for positive PR. Of course it’s fine if PepsiCo wants to give back to the community, but this is not philanthropy, it’s branding. The Pepsi Refresh website has an entire section devoted to education.⁴⁶ But Pepsi does not belong in schools, whether it’s vending machines or voting contests.

Another disturbing aspect of the Pepsi Refresh Project is its cooptation of healthy food advocates. The program comes complete with a “Food and Shelter Ambassador” that is making \$5K

PROFIT (Sept. 1, 2010), <http://www.appetiteforprofit.com/2010/09/01/back-to-school-with-pepsico-stealth-marketing/>.

⁴¹ See generally PEPSI REFRESH PROJECT, <http://www.refresheverything.com/> (last visited Dec. 21, 2011).

⁴² Linda N. Weller, *Pepsi Refreshes Alton Parochial School’s Computers*, THE TELEGRAPH.COM (Aug. 20, 2010, 8:30 PM), <http://www.thetelegraph.com/news/pepsi-43982-new-alton.html>.

⁴³ *Id.*

⁴⁴ PEPSICO, *supra* note 4, at 30.

⁴⁵ Weller, *supra* note 42.

⁴⁶ See generally PEPSI REFRESH PROJECT, *supra* note 41.

grants for projects like school gardens and a cross-country bicycle potluck.⁴⁷ And in another heartwarming kid project, a farmers market in Illinois won \$25,000 to help teach schoolchildren about eating fresh fruits and vegetables, a worthy cause for sure.⁴⁸ But what about the mixed messages kids receive from all the promotion with Pepsi logos associated with these two projects?

It's no wonder that in these hard economic times, so many groups would be desperate enough to turn to the nation's largest purveyor of processed food to try and promote the healthy kind. But they are really doing more to promote the Pepsi brand than they are to advance their own cause. Indeed, they are undermining the very ideals they espouse. Moreover, these grants give credibility to the notion that we can (and should) rely on Big Food to fix our broken food system. But nothing could be further from the truth. PepsiCo is happy to spend relatively small amounts of money in exchange for getting to hitch its PR wagon to the likes of farmers markets and school gardens.

PEPSICO IN THE DEVELOPING WORLD, AKA "EMERGING MARKETS"

In addition to being America's leading purveyor of processed foods, PepsiCo is also positioning itself as global leader, forming a "Global Nutrition Group" in 2010. According to the company's annual report, this "groundbreaking initiative is intended to help accelerate the growth of our Good-for-You products from \$10 billion in net revenue in 2010 to \$30 billion by 2020."⁴⁹

These days no food company can survive globally without continuous expansion, especially into the developing world. Global growth is also crucial because of threats of regulation and other public relations challenges here at home.

PepsiCo is very dependent on "emerging markets," which in corporate speak means the developing world. PepsiCo proudly announced a \$2.5 billion investment in China, on top of the \$1 billion the company has already spent there since 2008.⁵⁰ The soft drink and snack food giant intends to build a dozen new food and beverage plants, to add to the current 27 facilities.⁵¹ Its interna-

⁴⁷ Michele Simon, *Why Are Healthy Food Advocates Stumping for Pepsi?*, APPETITE FOR PROFIT (Sept. 20, 2010), <http://www.appetiteforprofit.com/2010/09/20/why-are-healthy-food-advocates-stumping-for-pepsi/>.

⁴⁸ See PEPSI REFRESH PROJECT, *supra* note 4, at 41.

⁴⁹ PEPSICO, *supra* note 4, at 27.

⁵⁰ Valerie Bauerlein, *Pepsi Battles Coke in China—Investment of \$2.5 Billion Increases Competition with Main Rival, Local Firms*, WALL ST. J., May 22, 2010, at B6.

⁵¹ *Id.*

tional business boosted 2010 first-quarter results, with its Asia, Middle East and Africa unit posting 13% growth in snack volume and 10% in beverage volume, largely due to growth in China and India.⁵² According to the *Wall Street Journal*: “Both beverage giants [Pepsi and Coke] are expanding aggressively in China, India and Russia, among other emerging markets, where growth is much faster than in the U.S. Soft-drink sales have declined for five years in the U.S.”⁵³

While it’s typical for global food companies to expand in this manner, PepsiCo is also positioning itself as a source of good nutrition for malnourished nations. For example, the company says that “in countries where malnutrition is a serious issue, we offer products directly aimed at addressing chronic hunger.”⁵⁴ The company announced “a pilot program focusing on chronic hunger . . . to eradicate extreme poverty and hunger by 2015” and is “working toward developing nutritious fortified products to reduce hunger in India, South Africa, and in time, Nigeria.”⁵⁵ But are fortified processed foods really the answer to global hunger?

PEPSI’S LOBBYING POWER

PepsiCo Helping to Undermine Marketing to Children Regulation

For years, PepsiCo and other food companies that claim to be so responsible and care about the welfare of children have shown themselves to be completely untrustworthy. In late 2005, given alarming data on childhood obesity and the connection to child-targeted junk food ads, the Institute of Medicine recommended that Congress act within two years if industry showed no signs of progress through voluntary measures.⁵⁶

In response, fast food and junk food peddlers banded together in 2006 to create the impressive-sounding Children’s Food and Beverage Advertising Initiative (CFBAI).⁵⁷ An “initiative” is in-

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Addressing Under Nutrition*, PEPSICO INDIA REGION, <http://demo1.pepsicoindia.co.in/CSR/PerformanceWithPurpose/HumanSustainability/AddressingUnderNutrition.aspx> (last visited Dec. 21, 2011).

⁵⁵ *Id.*

⁵⁶ INST. OF MEDICINE, *FOOD MARKETING TO CHILDREN AND YOUTH: THREAT OR OPPORTUNITY?* (2010), available at <http://www.iom.edu/Reports/2005/Food-Marketing-to-Children-and-Youth-Threat-or-Opportunity.aspx>.

⁵⁷ See generally *Children’s Food and Beverage Advertising Initiative*, Better Business Bureau, <http://www.bbb.org/us/children-food-beverage-advertising-initiative/> (last visited Dec. 21, 2011).

dustry's favorite way to substitute for actual law. The CFBAI consisted of a series of individual company "pledges" on food marketing to children.⁵⁸ PepsiCo proudly touts its membership in CFBAI.⁵⁹ Only one problem: by all accounts, it's been a dismal failure. At least three organizations, the Yale Rudd Center for Food Policy and Obesity, Children Now, and the Center for Science in the Public Interest have each conducted reviews of industry voluntary self-regulation on food marketing to children and found the system to be lacking, to say the least.⁶⁰

Then in 2009 at the request of Congress, four government agencies—Federal Trade Commission, Centers for Disease Control and Prevention, U.S. Department of Agriculture, and the Food and Drug Administration—collectively known as the Interagency Working Group, proposed voluntary "principles" for food companies to follow in hopes of curbing ads aimed at kids for fast food, sugary cereals, soda, candy, and a host of other nutrient-deficient food products.⁶¹

The FTC even took pains to explain just how voluntary the rules would be:

This is a report to Congress, not a rulemaking proceeding, so there's no proposed government regulation. In fact, the FTC Act explicitly forbids the Commission from issuing a rule restricting food advertising to children. So the FTC couldn't issue a rule on this subject if it wanted to, which it doesn't.⁶²

And yet, in July 2011, the food industry launched an all-out offensive against this tame governmental attempt to rein in corporate marketing.

Enter the "Sensible Food Policy Coalition" consisting of Pep-

⁵⁸ *Id.*

⁵⁹ See *Purpose: Policies*, PEPSICO, <http://www.pepsico.com/Purpose/Performance-with-Purpose/Policies.html> (last visited Dec. 21, 2011).

⁶⁰ JENNIFER L. HARRIS ET AL., YALE RUDD CTR. FOR FOOD POLICY AND OBESITY, *FAST FOOD FACTS: EVALUATING FAST FOOD NUTRITION AND MARKETING TO YOUTH* (2010), available at http://fastfoodmarketing.org/media/FastFoodFACTS_Report.pdf; CHILDREN NOW, *THE IMPACT OF INDUSTRY SELF-REGULATION ON THE NUTRITIONAL QUALITY OF FOODS ADVERTISED ON TELEVISION TO CHILDREN* (2009), available at http://www.childrennow.org/index.php/learn/reports_and_research/article/576; AMENA BATADA ET AL., CTR. FOR SCI. IN THE PUB. INTEREST, *BETTER-FOR-WHO?* (2009), available at <http://cspinet.org/new/pdf/pledgereport.pdf>.

⁶¹ See Press Release, Fed. Trade Comm'n, Interagency Working Grp. Seeks Input on Proposed Voluntary Principles for Marketing Food to Children (Apr. 28, 2011) <http://www.ftc.gov/opa/2011/04/foodmarket.shtm>.

⁶² David Vladeck, *What's on the Table*, BUSINESS CENTER BLOG FOR THE BUREAU OF CONSUMER PROTECTION: BUSINESS CENTER (July 1, 2011, 8:46 AM), <http://business.ftc.gov/blog/2011/07/whats-table>.

siCo, Kellogg, Viacom, Time Warner, and even the U.S. Chamber of Commerce, all banding together trying to derail the federal proposal. The group spent a cool \$6.6 million on lobbying in the first quarter of 2011.⁶³ “Overall, records show, the coalition’s main members [which includes PepsiCo] have spent nearly \$60 million on lobbying since the start of the Obama administration.”⁶⁴ By August of 2011 PepsiCo, itself had spent over \$2.5 million on lobbying the federal government.⁶⁵ The previous year, PepsiCo expended \$6,874,800 on lobbying.⁶⁶ PepsiCo made political contributions in 14 states in 2010, both to individual campaigns and political action committees (PACs). PepsiCo focused its energy on a few states, spending the bulk of its money in California and Illinois. The company made political contributions of about \$714,000 in California and \$40,000 in Illinois.⁶⁷ With industry pulling out all the stops, even going so far as to successfully lobby Congress to require a “cost benefit analysis” of the proposed voluntary principles⁶⁸ (how to measure cost/benefit if compliance is not required is a mystery), what are the odds the final report will ever see the light of day?

THE LAW ACCORDING TO PEPSICO?

PepsiCo clearly has no interest in anything the government has to say about how to regulate marketing to children. Instead, PepsiCo has it all figured out. Indeed, the company’s website contains an array of “policies” regarding marketing to children. You can download:

- PepsiCo’s Nutrition Criteria for Advertising to Children
- PepsiCo’s Policy on Responsible Marketing and Advertising to Children
- The PepsiCo Pledge (Children’s Food and Beverage Advertising Initiative)
- PepsiCo’s Global Policy on the Sale of Beverages to Schools

⁶³ Lyndsey Layton & Dan Eggen, *Food, Ad Industries Lobby Against Nutrition Guidelines*, WASH. POST, July 10, 2011, at A03.

⁶⁴ *Id.*

⁶⁵ See *Annual Lobbying by PepsiCo Inc.: 2011*, CTR. FOR RESPONSIVE POLITICS, <http://www.opensecrets.org/lobby/clientsum.php?id=D000000200&year=2011> (last visited Jan. 2, 2012).

⁶⁶ See *Annual Lobbying by PepsiCo Inc.: 2010*, CTR. FOR RESPONSIVE POLITICS, <http://www.opensecrets.org/lobby/clientsum.php?id=D000000200&year=2010> (last visited Jan. 2, 2012).

⁶⁷ See *PepsiCo, Inc. 2010 Corporate Political Contributions*, PEPSICO, http://www.pepsico.com/Download/Pepsico10_Corp_Cont.pdf (last visited Dec. 23, 2011).

⁶⁸ Brian Montopoli, *GOP Decries “Nanny State” Push on Junk Food Ads*, CBS NEWS (July 7, 2011, 1:39 PM), http://www.cbsnews.com/8301-503544_162-20077584-503544.html.

- PepsiCo Beverages North America School Beverage Policy
- Frito-Lay School Policy⁶⁹

The PepsiCo website is a veritable legal document depository. If there's one thing corporations hate more than bad PR, it's government regulation. PepsiCo's myriad commitments and pledges are part of an overall strategy to placate critics and give policymakers the impression that the company has it covered. No need for science-based, democratically-determined laws to protect public health, PepsiCo will decide all by itself how and when to control its behavior. But is voluntary self-regulation sufficient, given the enormity of the current public health crisis of diet-related chronic disease?

History has demonstrated that companies like PepsiCo cannot be trusted to put people before profits. In fact, corporations—despite the increasing lip service given to corporate social responsibility—are legally required to make shareholders' interests paramount.⁷⁰ Indeed, a recent downturn in PepsiCo's stock performance is causing some investment analysts to criticize the company. "They have to realize that at their core they are a sugary, fatty cola company and people like that."⁷¹ And the *Wall Street Journal* explained the problem this way:

Hailed as a strategic visionary since taking PepsiCo's reins nearly five years ago, Mrs. Nooyi is facing doubts from investors and industry insiders concerned that her push into healthier brands has distracted the company from some core products.⁷²

In the same article, Nooyi acknowledged that she may have spent a disproportionate amount of time talking about healthier products, but that "PepsiCo has to satisfy critics about health concerns."⁷³ In other words, Nooyi has a conflict on her hands. She has to keep both investors and critics happy. The only way to accomplish both is by boosting the company's core brands, while attempting to make things look good through clever public relations.

What all this translates to is little change that will actually benefit public health. That's why we have a system of laws and regula-

⁶⁹ See *Purpose: Policies*, *supra* note 59.

⁷⁰ See *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919); *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 879 (Del. Ch. 1986). *But see Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985).

⁷¹ See Tony D'Altorio, *The Pepsi Challenge Loses Its Fizz*, INVESTMENT U (Mar. 30, 2011), <http://www.investmentu.com/2011/March/the-pepsi-challenge-loses-fizz.html>.

⁷² Mike Esterl & Valerie Bauerlein, *PepsiCo Wakes Up and Smells the Cola*, WALL ST. J., June 28, 2011, at B1.

⁷³ *Id.*

tions designed to protect the public from corporate overreach. Unfortunately, in the current anti-regulatory climate, that system is under attack and constantly being eroded.

Have we now replaced the democratic process with corporate public relations? What are the long-term consequences of allowing such a powerful multinational corporation like PepsiCo to call all the shots? Let's hope we don't find out.