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**Department of Policy and Business Practices**

## **Commission on Marketing and Advertising**

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**ICC roundtable:** Can advertising & self-regulation survive in the new global environment of re-regulation?

**Meeting on 12 January 2009, 8:30 – 16:30**

**Winston & Strawn LLP, 1700 K Street N.W, Washington,  
D.C. 20006-3817**

### **1. Introductory remarks**

John Manfredi, Chair of the Commission on Marketing and Advertising and Managing Partner of Manloy Associates, welcomed participants to the meeting and extended his thanks to Winston & Strawn LLP for hosting the roundtable. Mr Manfredi spoke of how the recent financial crisis was spreading uncertainty across sectors including the marketing and advertising industry as governments consider broadening their regulatory reach. He noted the significance the general decline of consumer trust would have on marketers and efforts to promote self-regulation. Before introducing the plenary speaker, Mr Manfredi introduced ICC and the work of its Marketing Commission to new participants. In his introduction to each panel, he explained ICC's history and engagement on the four topics.

### **2. Keynote speaker**

Deborah Platt Majoras, Vice President and General Counsel for Procter & Gamble, delivered the plenary address that examined the prospects for advertising and self-regulation under the current financial crisis and calls for re-regulation of some sectors of the economy. Ms. Majoras warned against broad regulatory calls, and stressed the need for further communication about the benefits of advertising, including its role in promoting competitive markets, its responsiveness to changing societal dynamics, the high compliance rates to self-regulatory codes, and especially the way in which the cost burden of self-regulation falls to industry at a time when government can little afford further outlays. Ms. Majoras said that advertising would not face threats of major restrictions within the U.S. (outside of direct-to-consumer pharmaceutical marketing). But she urged self-regulatory organizations to maintain the highest ethical standards going forward and explore new self-regulatory programmes like recent initiatives in food and beverage advertising to children.

### **3. Panel on advertising in interactive environments**

In introducing the panel, Mr. Manfredi noted that more than a decade ago, the ICC did pioneering work in this area with the first Global Guidelines on Internet Marketing. The

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precepts set out in the Guidelines still serve as standards for online marketing. But today the advertising models driving the Internet are coming under increased scrutiny, especially as they relate to the issues of targeting, privacy and identity theft.

Panel moderated by **Mike Zaneis**, Internet Advertising Bureau, with the following panellists: **Joel Winston**, Federal Trade Commission (FTC); **Jane Horvath**, Google; **Dorothy Attwood**, AT&T; and **Liisa Thomas**, Winston & Strawn.

The panel first examined the background and current regulatory and self-regulatory guidance in interactive advertising, including the FTC's self-regulation principles and Network Advertising Initiative guidelines. Panellists highlighted the benefits of relevant, targeted advertising to consumers that underwrite the cost of most content on the Internet, while acknowledging concerns around privacy, lack of self-regulatory enforcement mechanisms, and consumer notice. Panel members discussed three basic self-regulatory mechanisms: privacy policies, browser controls, and self-regulatory principles. Noted benefits included flexibility for businesses to adapt and innovate, and challenges including the role of bad-faith actors and general lack of awareness of the issues among businesses and consumers. Panellists discussed the way in which expanding technology platforms create more questions, suggesting that many stakeholders are still mapping their own positions in this policy space and seeking further clarity about how to move forward. The FTC will soon issue a follow-up report on behavioral advertising, which will likely recognize the continued promise of self-regulation.

#### 4. Panel on sustainability and advertising

In introducing the panel, Mr. Manfredi noted that the ICC's Code on Environmental Marketing is a leader in this area and has provided guidance and direction to marketers around the world. The question now is how best to perpetuate the role of self-regulation in the environmental sphere? An ICC Marketing working group is now reviewing the situation to decide on actions that will update the relevant terms of reference and offer guidance to increase the Code's relevance.

Panel moderated by **Sheila Millar**, Keller and Heckman, with the following panellists: **Jim Kohm**, Federal Trade Commission; **David Mallen**, National Advertising Division; **Prisca Ancion-Kors**, Dutch SRO - Stichting Reclame Code.

The panel explored the work of the FTC and its current review of its Green Guides, which indicate the ways in which the FTC would likely interpret green advertising claims. The FTC stressed its work in this area as "environmentally agnostic," in that it focuses on avoidance of deception as opposed to any proactive environmental agenda. Recent NAD cases were discussed, as was the broad self-regulatory guide on sustainability claims in use in the Netherlands. Panellists discussed various green claims, with universal acknowledgement that general claims often pose serious substantiation challenges. Panellists outlined the importance of "reasonable interpretation/perception" on the part of consumers, as well as how regional regulatory structures in sectors like energy can influence advertising claim guidance. Panellists agreed that sustainability and advertising could be either an opportunity or a minefield, or both, and that the difference may be effective self-regulation.



## 5. Panel on self-regulation in Latin America

As a global business organization, the ICC has devoted increasing attention to fostering marketing self-regulation in the developing world for well over a decade, Mr. Manfredi said. The efforts started with outreach to Mexico and several countries within South America, and they now have included India, North Africa, Russia, Central Europe and China. Self-regulation has taken root in many emerging markets and is developing its infrastructure in others.

Panel moderated by **Carlos Portilla**, Portilla, Ruy-Díaz y Aguilar S.C, with the following panellists: **Angel De León**, Proctor & Gamble; **Marco Gregorio**, Reckitt Benckiser; **Filipe Fonteles Cabral**, Danneman Siemsen.

Panellists informed the roundtable that self-regulation is working well in some parts of Latin America, being used by business and consumers, and respected by governments. However, some countries face significant challenges from lack of understanding and belief in the effectiveness of self-regulation, especially among some key stakeholders like legal representatives, ad agencies, and academia. Panellists outlined the strength of self-regulation in Brazil, where it was begun in 1978, and suggested that self-regulation there will not be affected by the current economic crisis. Panel members also discussed the growing importance of self-regulation in Mexico, where the Health Ministry recently endorsed the self-regulatory organization, but acknowledged the need in Mexico for increased focus on consumer law. Panellists agreed that measures of self-regulation's success in Latin America include non-interference by governments and avoidance of bad regulation, recognition of self-regulation by government, as well as awareness of self-regulatory programmes by consumers and industry.

## 6. Panel on new self-regulation models and initiatives

Times of crisis obviously present great challenges but they also provide great opportunities, Mr. Manfredi said. And those sectors – such as food and beverage makers – whose crises long pre-dated the economic meltdown have been innovating with programs and initiatives designed to create trust with consumers and assure regulators and activists of their commitment to be part of the solution to very real issues. The global epidemic of childhood obesity -- and the need for everyone to join in an all-out effort to reverse it – is one of those issues that has yielded important and meaningful responses. One of the first global efforts was the ICC Framework for Food & Beverage Marketing. It provided specific guidance for how the broad precepts and general principles of the ICC's Advertising Code could and should apply to food and beverage products.

Panel moderated by **Jodie Bernstein**, Bryan Cave, with the following Panellists: **Elaine Kolish**, Children's Food and Beverage Advertising Initiative; **Catherine van Reeth**, Anheuser Busch InBev; **Stephen Kehoe**, Vice-President, Public and Government Affairs, PepsiCo.



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The moderator began by comparing the current pro-regulatory political environment with the similar environment that existed in the 1970s in the U.S., and the need to staunchly defend advertising, self-regulation, and their beneficial roles. Panellists summarized the key features of the recent food and beverage advertising pledge programmes in the U.S. and abroad - under which member companies agree not to advertise particular products to children. The pledge programmes differ from traditional self-regulation in that they pertain to ‘what’ a company advertises as opposed to ‘how’ it does so. Strengths of these programmes include speed of their rollout, increased trust, product innovation, and flexibility for companies across different product sectors in developing standards and timeframes for implementation. Panellists discussed the political pressures that led to the inception of these programmes, as well as the need for programme transparency and accountability. Upcoming challenges for these global programmes include broader reach, especially localizing beyond major multinationals, as well as strengthening self-regulating organizations monitoring. Panellists recognized that different products may require different forms of self-regulation, especially those that are already highly regulated like alcohol, and that regional differences in regulation, politics, and culture may also play roles in how models work.

#### **About the ICC Commission on Marketing and Advertising**

ICC has been the major rule-setter in international advertising self-regulation since 1937, when the ICC Commission on Marketing and Advertising issued the first ICC code on Advertising Practice – one of the most successful examples of business self-regulation ever developed. The codes have been adopted and used as the basis for self-regulation in countries around the world and are frequently referred to in national legislation and professional associations’ codes.

#### **About ICC**

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy, and helps business corporations meet the challenges and opportunities of globalization. Business leaders and experts drawn from ICC’s global membership establish the business stance on broad issues of trade and investment policy as well as on vital technical subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations in 130 countries.

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## Revised list of Participants

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