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## The Escalating Obesity Wars

Nonprofit's Tactics, Funding Sources Spark Controversy

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The full-page newspaper ads shout "Hype" at readers, warning them that they have "been forced a steady diet of obesity myths by the 'food police,' trial lawyers, and even our own government."

The sponsor, the Center for Consumer Freedom, is a "nonprofit organization dedicated to protecting consumer choices and promoting common sense," the ad notes.

The group was founded about 10 years ago with tobacco-company and restaurant money to fight smoking curbs in restaurants. Back then, the group called itself Guest Choice Network. But it changed its name in 2001, as it shifted its focus to food and beverage issues, raised by concerns about obesity, mad cow disease and genetically modified products.

The group and its ads are the brainchild of Richard Berman, a Washington lobbyist and lawyer who is the center's executive director. Berman is also president of Berman & Co., a public affairs firm that in 2003 received more than \$1.1 million in compensation from the nonprofit group -- more than a third of its revenue that year, according to its most recent tax returns.

Berman, 62, also is the founder of two other restaurant-supported groups: the American Beverage Institute, which fights restrictions on alcohol use, and the Employment Policies Institute Foundation, which has argued against raising the minimum wage -- a move that would hurt restaurants because of their large staffs of low-wage workers.

Philip Morris USA Inc. pledged \$600,000 -- most of the seed money -- for Berman's group in 1995. The company said it needed a consultant who was both a "hospitality industry insider as well as a legislatively astute individual," according to documents collected as part of the multi-state lawsuit against tobacco companies. Under the 1998 settlement, the documents were made public. Philip Morris continued to give money to Berman for several years, as did restaurant firms such as Host Marriott Corp. and Brinker International Inc., which owns the Chili's Grill & Bar and Maggiano's Little Italy restaurant chains. Neither firm returned phone calls about their ties to the Center for Consumer Freedom.

Berman declined to give specifics about who funds the Center for Consumer Freedom. He said only that it is funded by a coalition of restaurant and food companies as well as some individuals. "It doesn't add anything" to give details, Berman said.

According to Citizens for Responsibility and Ethics in Washington, a watchdog group funded by several educational foundations, Berman and his firm have received more than \$7 million since 1997 from the Center for Consumer Freedom and one of the other groups he founded. Last fall,

the watchdog group asked the Internal Revenue Service to revoke the Center for Consumer Freedom's 501(c)(3) tax-exempt status. The watchdog group said Berman has used the center to funnel money to himself and his company, a violation of federal tax law that bars companies or individuals from running a nonprofit for their private benefit. The organization also said that the group's activities were solely to promote the causes of restaurants and food producers, not consumers. Its activities, the organization said, are "not remotely charitable."

Jeffrey S. Tenenbaum, a Washington lawyer who specializes in nonprofit tax law, said that generally, for a group to qualify as a 501(c)(3) educational organization "there has to be bona fide education of the general public on given issues as compared to advocating particular industry positions." Otherwise, the group should qualify as a 501(c)(6), a trade and professional group. While both are both tax-exempt, a 501(c)(6) cannot receive tax-deductible charitable contributions.

Berman called Citizens for Responsibility and Ethics in Washington's charges "a silly thing . . . totally and factually false." It's not unusual, he said, for public affairs firms to manage nonprofits, and the expenses his firm received were to "buy all sorts of things, including employee time, rent, phones." Berman said the Center for Consumer Freedom is a legitimate, nonprofit educational group. "I haven't heard from the IRS, and I don't expect to; there's nothing to it."

"It's pretty obvious we're advocating from a point of view," Berman said. "But you can advocate and educate at the same time."

Berman said the charges are the "cost of doing business" of criticizing well-known activist groups such as People for the Ethical Treatment of Animals, Center for Science in the Public Interest and the Physicians Committee for Responsible Medicine. "It's to be expected when you give people a little heartburn, they don't like what you're doing."

Berman is not shy about going after groups his organizations oppose. A Web site sponsored by the Center for Consumer Freedom, [ActivistCash.com](http://ActivistCash.com), includes in-depth profiles of groups, including Mothers Against Drunk Driving, detailing their funding and key players. "Despite their innocent-sounding names, many of these organizations are financial Goliaths that use junk science, intimidation tactics, and even threats of violence to push their radical agenda," the Web site says.

Berman himself has said these groups have "a violent side to them" and will try to shut down firms whose activities run counter to their goals. He said that is why he won't name the companies who support his organization.

The Physicians Committee for Responsible Medicine scoffed at that assertion, saying its "policies would specifically exclude anyone promoting violence or illegal activity from functioning as a spokesperson or having any role in the organization."

"I'm troubled by this message and this industry that sells unhealthy things and are so willing to sacrifice the health of consumers," said Neal Barnard, president of the physicians group.

PRWatch, a nonprofit critic of the public relations industry, lists what it claims are the Center for Consumer Freedom's sponsors on its Web site. Those companies include Brinker International;

RTM Restaurant Group, the owner of Arby's; Tyson Foods Inc.; HMSHost Corp.; and Wendy's International Inc.

Few of those companies returned phone calls seeking comment. A Tyson spokesman said the company does "not share lists of organizations we support." A Wendy's spokesman, Denny Lynch, said the company has supported Berman's group in the past but declined to say when or how much. Lynch said Berman's group provides "a balancing perspective . . . another voice" in the increasingly loud debate over obesity.

Berman called PRWatch's list inaccurate and said the only reason the group is criticizing him is because he had criticized some of its leaders for a book they wrote about mad cow disease and its chances of occurring in the United States. "They have had it in for me for a long time," Berman said.

Sheldon Rampton, co-author of the book and research director of the Center for Media & Democracy, which owns PRWatch, said his group first learned of Consumer Freedom when the group attacked the book. But "we write about a lot of groups and would have reached the same conclusion about him if that had not been the case," he said.

Food industry officials who spoke only on the condition that they not be identified by name or by where they work said that by keeping the sponsors anonymous, Berman's group can be more vociferous, provocative and irreverent in its criticisms than a trade association. Berman's "stuff is factual, but everyone chooses the facts they represent," one executive said.

Berman agrees that his group can be edgier. "There's no doubt about that. Most trade associations try to insulate individual companies and brand names from cutting-edge rhetoric."

Over the years, the group's attacks on food critics have intensified. Last fall, the group ran a television ad featuring the "Seinfeld" Soup Nazi character barking at an overweight consumer, "Nothing for you! Come back when you're thinner." The ad asks: "Has the war on obesity gone too far?"

In February, immediately before and after the president's State of the Union address, the group broadcast another ad, showing a lawyer grilling a Girl Scout for selling cookies. "Learn more about lawyers cashing in on obesity," the ad said, calling on viewers to check out the group's Web site.

The center's campaign comes as Americans are bombarded with books and documentaries criticizing the fast-food diet. While many restaurants have introduced healthier fare to address these concerns, some are also offering consumers even bigger portions, such as the Enormous Omelet Sandwich at Burger King, the Monster Burger -- two one-third-pound patties -- at Hardee's and the Ultimate Colossal Burger -- two half-pound burgers on a triple-decker bun with cheese -- at Ruby Tuesday.

The immediate catalyst for this week's \$600,000 newspaper advertising campaign was an announcement earlier this month by the Centers for Disease Control and Prevention that it had vastly overestimated the number of deaths caused by obesity. The ads appeared in six major newspapers, including in Atlanta, where the CDC is based. Ads will soon appear in Washington's Metro system to get the attention of the nation's "opinion leaders," congressional staff members

and other key government employees, according to the group's spokesman, Mike Burita. In March 2004, the CDC published a report linking obesity to 400,000 deaths a year in the United States. Three months later, the Center for Consumer Freedom began challenging that statistic, issuing its first of many statements saying the deaths were vastly overstated.

Last week, the CDC announced new estimates, linking 112,000 deaths to obesity. Now, Berman said, the CDC needs to "come clean, to say it made a mistake," one that led to school boards, state legislatures and even members of Congress calling for all sorts of restrictions on food sales.

The CDC needs to announce its mistake "loudly and often," Berman said. But so far, the CDC appears to have no such intentions. "We still consider obesity to be a major public health threat, although there's uncertainty about the number of deaths from obesity," said Karen Hunter, a CDC spokeswoman. "There is no debate in our mind that obesity plays a role in increasing the risk of serious chronic disease like diabetes, heart disease and certain cancers."

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