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4110 SE Hawthorne Blvd. #123  
Portland, OR 97214-5246

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TEL 503.235.8012  
FAX 503.235.5073

info@commercialalert.org  
www.commercialalert.org

Marlene H. Dortch, Secretary  
Federal Communications Commission  
9300 East Hampton Dr.  
Capitol Heights, MD 20743

**RE: Complaint, Request for Investigation, and Petition for  
Rulemaking to Establish Adequate Disclosure of Product  
Placement on Television**

Dear Ms. Dortch:

This is a formal complaint against ABC, Inc., CBS Television, Fox Broadcasting Company, Fox Sport Networks LLC, National Broadcasting Company, Inc., United Paramount Network, Walt Disney Co. and the WB Television Network, regarding possible violations of Section 317 of the Communications Act, for failure to comply with sponsorship identification requirements. It is also a request for an investigation of current product placement practices on television, and a petition for rule-making to require TV networks and stations to clearly and conspicuously identify and disclose product placements.

It is a basic principle of law and common morality that advertisers must be honest with viewers. Advertisers can puff and tout, and use all the many tricks of their trade. But they must not pretend that their ads are something else. This principle has been a cornerstone of communications law since the beginning of the broadcast era. Congress first required broadcasters to identify their sponsors in the Radio Act of 1927. The reasoning is obvious: "Listeners are entitled to know by whom they are being persuaded."<sup>1</sup>

Yet current practice in the broadcast industry violates this principle broadly and systematically. Broadcasters not only fail to identify their sponsors; worse, they fail to identify the ads themselves, and instead pretend that the ads are merely part

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<sup>1</sup> *Applicability of Sponsorship Identification Rules*, 40 FCC 141 (1963), as modified, 40 Fed. Reg. 41936 (September 9, 1975.)

of shows. Such violation has become the new way of doing business. It is time for the Commission to acknowledge this new reality, and address it.

Put simply, TV networks and stations are shifting advertising from commercial breaks to programming itself. They are inserting branded products directly into programs, in exchange for substantial fees or other consideration. This advertising technique, called “product placement,” has become closely integrated into program plots, to the point that the line between programming and “infomercials” has become increasingly blurred. Some commentators see no line at all.

"This concept of [product] integration is a big push," explains Steve Rasnick, vice-president of UPP Entertainment Marketing. "There are a lot of corporations that realize being integrated from a product placement standpoint has a greater value than a 30-second spot. . . . Irrespective of what ad agencies tell you, there's a falloff in a commercial. People get up, they change the channel and TiVo gets around commercials altogether, so by being integrated into the program, you have a large, captive audience -- and an interested one."<sup>2</sup>

Television networks interweave advertising and programming so routinely that they are, in effect, selling to advertisers a measure of control over aspects of their programming.<sup>3</sup> Some TV programs are so packed with product placements that they approach the appearance of infomercials. The head of a company that obtained repeated product placements actually called one such program “a great infomercial.”<sup>4</sup> Yet these programs typically lack the disclosure required of infomercials<sup>5</sup> to uphold honesty and fair dealing.

Television stations that cram their programs with product placements, yet fail to identify the sponsors in a conspicuous way, are brazenly violating the public’s right to know who is seeking to persuade them.

Federal law requires disclosure of sponsored broadcast materials. The language of the statute (Section 317 of the Communications Act) is both broad and clear:

All matter broadcast by any radio station for which money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. . . .<sup>6</sup>

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<sup>2</sup> Mark R. Greer, “Going Hollywood: Beverage Companies Are Dealing with Advertising Overload with Less Traditional Tie-Ins.” *Beverage Industry*, May 1, 2003. See Attachment #1.

<sup>3</sup> See, for example, Johnnie L. Roberts, “On 'The Runner,' ABC's Upcoming Reality TV Show, Advertisers Can Shape the Plot -- for the Right Price.” *Newsweek*, May 7, 2001. See Attachment #2.

<sup>4</sup> Christina Binkley and Emily Nelson, “NBC Casts Vegas Casino in a Starring Role.” *Wall Street Journal*, August 5, 2003. See Attachment #3.

<sup>5</sup> Synchronal Corp., Trade Reg. Rep. (CCH) P 23,404 (1993) (requiring visual disclosure during first 30 seconds of any commercial lasting 15 minutes or more that the program is an ad.)

<sup>6</sup> 47 U.S.C. § 317(a)(1).

Sponsorship identification has been central to broadcast law since its inception. The Commission has consistently upheld sponsorship identification requirements. “Paramount to an informed opinion and wisdom of choice,” the Commission stated in one important case, “is the public’s need to know the identity of those persons or groups who elicit the public’s support.”<sup>7</sup> And again, a broadcast audience must “be clearly informed that it is hearing or viewing matter which has been paid for, when such is the case, . . . and the person paying for the broadcast of matter [must] be clearly identified.”<sup>8</sup>

The Commission has referred approvingly to an explanation of this rule: “An advertiser would have an unfair advantage over listeners if they could not differentiate between the program and the commercial messages and were, therefore, unable to take its paid status into consideration in assessing the message.”<sup>9</sup>

### **I. ACTION REQUESTED: THE COMMISSION SHOULD CONDUCT AN INVESTIGATION AND RULE-MAKING TO REQUIRE DISCLOSURE OF PRODUCT PLACEMENTS ON TELEVISION**

At present, this principle is embodied to some degree in Commission Rule 73.1212. This rule provides, in relevant part:

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied. . . .

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.<sup>10</sup>

This rule, as currently written, is not adequate to the new challenges posed by embedded advertising, such as product placement, product integration and plot integration. In essence,

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<sup>7</sup> *Liability of Universal Broadcasting Co. of Minneapolis-St. Paul, Inc.*, 51 FCC 2d 597, 602 (1975), *forfeiture reduced*, 58 FCC 2d 1367 (1976), *citing Sponsorship Identification Rules*, 34 FCC 829, 894 (1963).

<sup>8</sup> *Midwest Radio-Television, Inc.*, 49 FCC 2d 512, 515 (1974), *citing National Broadcasting Company* 27 FCC 2d 75 (1970).

<sup>9</sup> *Children’s Television Report and Policy Statement*, 50 FCC 2d 1, 15 (1974), *citing Hearings on H.R. 5589 before the House Committee on the Merchant Marine and Fisheries*, 69<sup>th</sup> Cong., 1<sup>st</sup> Sess., at p. 83 (1926).

<sup>10</sup> 47 C.F.R. § 73.1212.

some programs now resemble program-length ads, with sophisticated integration of advertising into the program. Allowing broadcasters to identify the sponsors only once during an entire program, if at all, is wholly insufficient to match the subtle and complex efforts to persuade viewers to buy products via product placement. The net effect is that many viewers simply are not aware that they are being influenced via programming.

The Commission itself has recognized that it might have to move more forcefully in this area one day. “If inadequate separation contributes to an inability to differentiate programming from advertising,” the Commission stated in a report on children and television, “then Commission action designed to maintain a clear separation would further the policies of Section 317.”<sup>11</sup>

That day has come. To prevent stealth advertising, and ensure that viewers are fully aware of the efforts of advertisers to embed ads in programming, the Commission should require TV networks and stations to prominently disclose to viewers that their product placements are ads. In addition, product placements should be identified *when they occur*. This should be in addition to disclosure at the outset of a program. Disclosure should be large enough, and kept on the screen long enough, so that it can be read and understood. Concurrent disclosure should read “Advertisement” when the product placement is on the TV screen. Disclosure at the outset of the program should be in plain English, such as: “This program contains paid advertising for....”

Without such disclosure, the elaborate intertwining of programming and product placement should be considered an unfair and deceptive advertising practice. It is inherently deceptive, because it is often below viewers’ threshold of awareness. Without concurrent disclosure, viewers may not realize at the time the ad appears on the screen that an advertiser is trying to influence them.

The impact of the product placement, like that of ordinary ads, occurs at the moment of exposure. To inform viewers of product placements only at the start or end of a show is not adequate, because they might not be viewing then. Honesty and fair dealing require that the label be attached directly to the thing to which it pertains – in this case, the product placement.

## **II. THE NEW PRODUCT PLACEMENT: PRODUCT INTEGRATION, PRODUCT IMMERSION, PLOT PLACEMENT, TITLE PLACEMENT, PAID SPOKESPERSONS AND VIRTUAL ADVERTISING**

During the last four years, the scope, sophistication and intensity of televised product placement has increased dramatically. It has emerged as a kind of parallel industry to conventional advertising.

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<sup>11</sup> *Children’s Television Report and Policy Statement*, 50 FCC 2d 1, 15 (1974).

<sup>14</sup> Wayne Friedman, “Madison + Vine: Product Integrators Tackle Learning Curve; Marriages Of Marketers, Media Are Hot, But Risks Are Still Plenty.” *Advertising Age*, October 21, 2002. See Attachment #4.

Like conventional advertising, product placement deals usually are arranged through an intermediary. Often it is an agency that specializes in these deals, such as UPP Entertainment Marketing, Feature This!, or Norm Marshall & Associates. Companies hire the agency to promote their products on TV and in the movies. Typically, the agency reviews TV and movie scripts to identify product placement opportunities, and then helps negotiate agreements between producers and clients.

*Advertising Age* provided this description of *American Idol*'s first show:

Coke had its logo-ed beverage cups in front of the three judges, had the traditional green room renamed the "Coca-Cola Red Room" and received the benefit of special taped segments, labeled "Coca-Cola Moments." Before one commercial break on a recent episode, one of the hosts said, "But first, I want to get a Coke."<sup>14</sup>

The WB Network stuffed so much Coca-Cola product placement into *Young Americans* that New York *Daily News* TV critic Eric Mink called it a "slick, thinly disguised commercial."<sup>15</sup>

Another example of product integration is ABC's *Who Wants To Be A Millionaire*, which is an extended plug for AT&T; ABC worked the long distance giant's name directly into the show. "When a contestant needs to call a friend for help with a question," *Advertising Age* reports, "host Regis Philbin says, 'Let's go to our friends at AT&T.' This also was tied to a media buy on the show."<sup>16</sup>

Geri Wang, ABC's senior vice president for prime-time sales, explained that the network sought to "turn 'All American Girl' into something bigger for our clients, by figuring out how to organically get them integrated into the show."<sup>17</sup>

Pharmaceutical companies are increasingly placing paid spokespersons on programs to increase drug sales. This is a variant of product placement that is really product spokesman placement. Such stars as Lauren Bacall, Rob Lowe and Kathleen Turner have promoted specific drugs on TV programs such as NBC's *Today* show and the *Montel Williams Show*, often without disclosing that they were paid by pharmaceutical companies, or had other financial ties to them.<sup>18</sup>

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<sup>15</sup> Eric Mink, "WB Yet Again Leans on the 'Young' & Cliched." *New York Daily News*, July 12, 2000. Joe Flint, "TV's New Teen Drama Gives Starring Role to Coke --- What \$6 Million Can Buy: Soft Drink Is Everywhere In WB's Prep-School Saga." *Wall Street Journal*, July 12, 2000. Scott Leith, "Coke Leads Push to Place Products in Movies, TV." *Atlanta Journal and Constitution*, October 29, 2000. See Attachment #5.

<sup>16</sup> Wayne Friedman, "Madison + Vine: Product Integrators Tackle Learning Curve; Marriages of Marketers, Media Are Hot, But Risks Are Still Plenty." *Advertising Age*, October 21, 2002.

<sup>17</sup> Stuart Elliott, "Altered Reality: ABC's New Show 'All American Girl' Will Work in the Products of Sponsors." *New York Times*, March 12, 2003. See Attachment #6.

<sup>18</sup> David P. Hamilton, "Celebrities Help 'Educate' Public on New Drugs." *Wall Street Journal*, April 22, 2002. Melody Petersen, "Heartfelt Advice, Hefty Fees." *New York Times*, August 11, 2002. See Attachment #7.

A similar use of paid spokespersons was a regular feature of the NBC program *The Other Half*. The show offered “the chance to buy guest spots for their products and executives,” the *New York Times* observed. “[R]epresentatives from advertisers like Clorox, Hyundai Motor America and even Tan Towel, a ‘self-tanning towelette,’ appear on the show as part of the regular programming.” The *Times* continued:

During the Clorox-sponsored segment, for example, the hosts... faced off against members of the studio audience in a make-believe game show about housekeeping. And on the segments paid for by Hyundai, a company marketing executive offered tips on buying and leasing cars. A Hyundai vehicle was on stage for each of the four segments and on the final one, which appeared Wednesday, the company gave away a vehicle to the winner of an online sweepstakes.

While the executives were identified as being from Clorox and Hyundai, the hosts made no mention that the visits were part of an advertising arrangement or that the segments were of a different nature than the show's usual fare...

The sponsored segments were formally identified as such only at the end of each show, when during the closing credits the words "Promotional consideration provided by," followed by the name of the segment sponsor, appeared briefly on screen.<sup>22</sup>

The Fox Sports Network is a leader in high-intensity product placement, which it refers to by the revealing term “immersion.” Last year, Levi Strauss paid Fox Sports to feature Dockers pants on their show, *The Best Damn Sport Show Period*. The *New York Times* reported that:

To demonstrate the new Dockers stain-resistant Go Khaki pants, the actor, Ted Mattison, appeared as a guest on [the show]. Mr. Mattison was part of a skit centered on a bachelor party for a cast member. . . . The Go Khaki commercial with Mr. Mattison -- which also takes place during a bachelor party -- ran after the skit ended. The appearance was part of an advertising package bought by Levi Strauss from Fox Sports Net that included commercial time on the show as well as other programs on the channel. . . . Neither the advertiser nor the network would discuss the terms of the deal, which was estimated to be in the six figures. Dockers is one of several brands that are being woven into the content of various

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<sup>22</sup> Stuart Elliott, “Hiding a Television Commercial in Plain View.” *New York Times*, May 24, 2002. See Attachment #8.

<sup>24</sup> Stuart Elliott, “A Word From Our Sponsor? He's Here Now.” *New York Times*, July 1, 2002. See Attachment #9.

episodes of "The Best Damn Sports Show Period," and viewers are not told the appearances are part of advertising arrangements.<sup>24</sup>

*Advertising Age* reports that *The Best Damn Sports Show Period* "features a bar decked out with kegs spouts, neon signs and other signage that will carry three Labatt brands names: Rolling Rock, Labatt Blue and Dos Equis." On the extreme sports program *54321*, the "hosts and guests will drink Snapple, and the company's sun logo will appear as a set backdrop."<sup>26</sup> Guy Sousa, executive vice-president for advertising sales at Fox Cable Sports said "What we are doing is really immersing products into programs...so that they really feel like it is part of the show."<sup>27</sup>

Media agencies are even buying exclusive advertising and product placement rights to an entire miniseries. According to *Television Week*, Universal Television Networks has sold to media agency OMD Worldwide the exclusive advertising and product placement positions for the Sci-Fi Channel's *Six Days 'Til Sunday*, which is slated to run in spring, 2004. The cost of the agreement is expected to be "well into the seven figures" for the series.<sup>28</sup>

Product placement has now expanded to include "plot placement," in which a product is written into the plotline. For example, in 2002, ABC's *All My Children* gave prominent placement to Revlon, the cosmetics company, in exchange for millions in advertising revenues.<sup>29</sup> Similarly, NBC is integrating Avon's new cosmetics line, "Mark," into the plotline of its soap opera, *Passions*.<sup>30</sup>

Title placement has come as well. In the WB show *Pepsi Smash*, the show not only uses use Pepsi's name; it uses the Pepsi multi-colored swirl for the show's logo as well.<sup>31</sup>

Last year, OMD USA and Disney agreed on a \$1 billion deal involving the sale of "commercial time on ABC, ESPN networks, ABC Family, Lifetime, A&E Networks and other Disney properties...[along with] joint program-production deals with advertisers, joint funding of television specials and sporting events as well as product placements in shows."<sup>32</sup>

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<sup>26</sup> Richard Linnett, "Fox Sports Specialty: Product 'Immersion'; Net Inks Tie-Ins with Snapple, Labatt, Lincoln." *Advertising Age*, January 20, 2003. See Attachment #10.

<sup>27</sup> Richard Linnett, "Fox Sports Specialty: Product 'Immersion'; Net Inks Tie-Ins with Snapple, Labatt, Lincoln." *Advertising Age*, January 20, 2003.

<sup>28</sup> Louis Chunovic, "Sci-Fi Pioneers Placement Deal; In 'Unique Model' OMD Buys All Time on Cable Channel's Spring 2004 'Six Days' Miniseries." *Television Week*, June 9, 2003. See Attachment #11.

<sup>29</sup> Joe Flint and Emily Nelson, "'All My Children' Gets Revlon Twist --- First Came Product Placement; Now TV 'Plot Placement' Yields ABC a Big Ad Buy." *Wall Street Journal*, March 15, 2002. See Attachment #12.

<sup>30</sup> Leslie Ryan, "Passions' Product Pitch; NBC, Avon Weave New Cosmetics Line Into Soap Opera's Story." *Television Week*, July 28, 2003. See Attachment #13.

<sup>31</sup> A. J. Frutkin, "Summertime, and Ad-Libbing Is Easy." *New York Times*, July 13, 2003. See Attachment #14.

<sup>32</sup> Meg James, "Disney Sells a \$1-Billion Ad Package; Media: Multi-network, Multi-advertiser Deal Involves All of Its Units and May Be The Largest Ever in The Industry." *Los Angeles Times*, June 11, 2002. See Attachment #15.

Princeton Video Image has developed a technology to insert “virtual advertising” into TV footage of all sorts. TV networks are using the technology to insert product placements into reruns of syndicated TV programs,<sup>33</sup> sports programs,<sup>34</sup> dramas,<sup>35</sup> and even news footage.<sup>36</sup>

### III. THE DISTINCTION BETWEEN “PRODUCT INTEGRATION” AND INFOMERCIALS HAS BECOME VIRTUALLY NONEXISTENT

Numerous observers have noted the convergence between “product integration” and infomercials. In August, the *Wall Street Journal* reported on an NBC offering called the *Fear Factor* that features a gambling casino.

When NBC airs its fall television lineup, Monday-night viewers will quickly become familiar with the casino's shimmering gold towers and sumptuous high-roller suites. On Sept. 29, they will see Mandalay Bay playing itself in the "Fear Factor" gross-out reality show. Later that night, and each week thereafter, Mandalay will take on the fictional role of the Montecito Resort & Casino in "Las Vegas" -- one of NBC's top drama prospects this fall -- alongside the show's other star, James Caan.”

"It's a great infomercial," said Mr. Glenn Schaeffer, the Mandalay Resort Group President, regarding the *Fear Factor*.<sup>37</sup>

That's just one show. There are many others. *Arkansas Democrat-Gazette* writer Celia Story called NBC's *The Restaurant* an “infomercial-ish program.”<sup>38</sup> The *Denver Post*'s Bill Husted agreed; the program has the “feel of an infomercial,” he wrote.<sup>39</sup> Alessandra Stanley of the *New York Times* wrote that *American Idol* had “the feel of a late night infomercial for bodybuilding equipment.”<sup>40</sup> Vinay Menon of the *Toronto Star* referred to *American Idol* as “what may have

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<sup>33</sup> Stuart Elliott, “Reruns May Become a Testing Ground for Digital Insertion of Sponsor's Products and Images.” *New York Times*, May 23, 2001. See Attachment #16.

<sup>34</sup> Stuart Elliott, “Real or Virtual? You Call It; Digital Sleight of Hand Can Put Ads Almost Anywhere.” *New York Times*, October 1, 1999. See Attachment #17.

<sup>35</sup> Stuart Elliott, “A Video Process Allows the Insertion of Brand-Name Products in TV Shows Already on Film.” *New York Times*, March 29, 1999. See Attachment #18.

<sup>36</sup> Alex Kuczynski, “On CBS News, Some of What You See Isn't There.” *New York Times*, January 12, 2000. See Attachment #19.

<sup>37</sup> Christina Binkley and Emily Nelson, “NBC Casts Vegas Casino in a Starring Role.” *Wall Street Journal*, August 5, 2003

<sup>38</sup> Celia Storey, “The Restaurant Portions out Advertisers' Favorite Entrees.” *Arkansas Democrat-Gazette*, August 12, 2003. See Attachment #20.

<sup>39</sup> Bill Husted, “Coors Tap Flows Freely on TV Show.” *Denver Post*, July 27, 2003. See Attachment #21.

<sup>40</sup> Alessandra Stanley, “Here's Reality: 'Idol' Feeds Hopefuls to a Shaky Music Business.” *New York Times*, January 23, 2003. See Attachment #22.

been the highest-rated infomercial in television history,"<sup>41</sup> while the *Winnipeg Sun*'s Bill Brioux said that it "may be the world's most expensive infomercial."<sup>42</sup>

#### IV. THE USE OF PRODUCT PLACEMENT IS GROWING

This trend shows no sign of abating. To the contrary, as the line between programming and infomercials blurs, the practice is spreading rapidly. "[A]lmost every channel contacted" observed *Advertising Age* "says product placement is on the rise."<sup>43</sup>

Leslie Moonves, the chairman and CEO of CBS, recently told the *New York Observer*, "There's going to be much more product placement." Moonves continued:

We did it with *Survivor*, obviously. They're doing it with *American Idol*. I saw *Minority Report*, Steven Spielberg's movie -- that had more product placement than any TV show I've ever seen. So my phrase is, 'If it's good enough for Spielberg, it's good enough for us.' So you're going to see more and more of that - you're going to see cars incorporated into shows, and instead of Ray Romano, sitting there with a can of nondescript soda, he'll be drinking a Diet Pepsi. That's going to happen."<sup>44</sup>

The practice has become so endemic that Fox now has a senior VP for integrated sales and marketing. Barry Schwartz, the current occupant of that position, says that roughly 10 programs on his networks use product placement. However, "next year, we'll probably do 20, and I could be conservative with that number."<sup>45</sup>

Media planners second that. A recent survey of 750 of these executives by InsightExpress and MediaPost found that 18 percent of them negotiated a product placement deal during the previous 6 months, but 26% anticipated negotiating a product placement deal during the next six months. That's an increase of 37 percent.<sup>46</sup>

There are indications that parts of the industry are moving towards eliminating separate spots entirely. The WB Network planned such a program, tentatively titled *Live From Tomorrow* or

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<sup>41</sup> Vinay Menon, "Ruben's Big Night on Idol Plays Small." *Toronto Star*, May 23, 2003. See Attachment #23.

<sup>42</sup> Bill Brioux, "Facing the Music; American Idol Wraps up with Two-Hour Finale." *Winnipeg Sun*, May 21, 2003. See Attachment #24.

<sup>43</sup> Janet Stilson, "Placements Push to Front; Wide Range of Advertisers Play More Sophisticated Product Game on Cable." *Advertising Age*, June 9, 2003. See Attachment #25.

<sup>44</sup> Jason Gay, "At CBS, Les Is More." *New York Observer*, May 19, 2003. See Attachment #26.

<sup>45</sup> Janet Stilson, "Placements Push to Front; Wide Range of Advertisers Play More Sophisticated Product Game on Cable." *Advertising Age*, June 9, 2003.

<sup>46</sup> MediaPost and InsightExpress, "Product Placements Gaining Momentum." June, 2003.

*Live From Right Now*, but plans for the show have been postponed, perhaps indefinitely, because of the inability to attract another major sponsor in addition to Pepsi-Cola.<sup>47</sup>

## V. PRODUCT PLACEMENT WORKS

The rush to product placement is not just a result of channel clickers and TiVo. More importantly, the marketing industry has found that this form of advertising is highly effective in planting impressions in viewers' minds. The fundamental appeal for advertisers "is the idea that advertising in the show, in the game, is significantly more impactful than in the breaks," Dennis Wilkinson, president and chief executive of Princeton Video Image, told the *New York Times*.<sup>48</sup>

This is not a new discovery. Ad agencies have known it for a long time. Back in 1982, the use of product placement in the movie *E.T.* boosted sales of *Reece's Pieces* by 65%.<sup>49</sup> Peter Gardiner, partner and chief media officer at Deutch, said that the *E.T.* product placement "was so well done and powerful, it drove sales for years and years."<sup>50</sup>

Product placement firms tout the effectiveness of these embedded ads. A List Entertainment, a product placement agency, states on its website "Successful product placements are more effective than ads at generating recall, promoting brand awareness and ultimately, increasing sales at a fraction of the cost of traditional advertising."<sup>51</sup>

In 1972, a movie production company president wrote to RJ Reynolds Tobacco that all the characters in a movie his company was producing smoked. "Movies are better than any commercial that has been run on television or any magazine," he boasted, "because the audience is totally unaware of any sponsor involvement."<sup>52</sup> (Emphasis supplied).

More recently, Brenda Williams, a Labatts USA spokeswoman, said, "When a product is embedded in the content of a movie or show, it can carry increased credibility with our target audience."<sup>54</sup>

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<sup>47</sup> Stuart Elliott and Bill Carter, "A TV Series Supported by Product Placements Falls Through for Lack of a Second Sponsor." *New York Times*, March 14, 2003. See Attachment #27.

<sup>48</sup> Stuart Elliott, "Real or Virtual? You Call It; Digital Sleight of Hand Can Put Ads Almost Anywhere." *New York Times*, October 1, 1999.

<sup>49</sup> Vernon Scott, "'E.T.' Invades Five More Continents." *United Press International*, November 2, 1982.

<sup>50</sup> Lisa Marsh, "Blockbuster Season for Product Placements." *New York Post*, May 26, 2002. See Attachment #28.

<sup>51</sup> A List Entertainment website, <<http://www.alistentertainment.com/brochurepage2.html>>.

<sup>52</sup> Stanton Glantz, "Smoking in Teenagers and Watching Films Showing Smoking." *British Medical Journal*, December 15, 2001. 323:1378-1379.

<<http://bmj.bmjournals.com/cgi/content/full/323/7326/1378>>.

<sup>54</sup> Mark R. Greer, "Going Hollywood: Beverage Companies Are Dealing with Advertising Overload with Less Traditional Tie-ins." *Beverage Industry*, May 1, 2003.

Academics agree. Product placements “are a means to reach potential buyers more effectively,” said Richard R. George, professor and chair, department of food marketing at the Haub School of Business of St. Joseph’s University.<sup>55</sup>

Top network officials agree as well. “When somebody is jumping up and down because they have a beer as a reward,” said CBS President Leslie Moonves, “and they make it seem like it's the greatest liquid that they ever drank in their lives and they're real people - that probably is more effective than having some model saying 'Hey, drink Budweiser.' It can be very effective.”<sup>56</sup>

Said Lynn Fletcher, chief strategic officer of Vickers Benson & Arnold, product placement is “more subtle than advertising because your (defensive) antenna is up a little less.”<sup>57</sup>

## **VI. CURRENT DISCLOSURE, IF ANY, OF TV PRODUCT PLACEMENT OFTEN APPEARS INADEQUATE TO MEET FEDERAL SPONSORSHIP IDENTIFICATION REQUIREMENTS**

Disclosure of product placement on TV ranges from minimal to nonexistent. Viewers can watch for hours with barely a hint that they have been watching paid embedded ads.

To cite just one example, the August 27, 2003 edition of *Big Brother 4* contained extensive product placement for McDonald’s, as well as a McDonalds’ ad at the end. Yet there was no disclosure at the outset of the show, and none either when the placements appeared on screen. There was a statement at the end of a segment featuring the product placement that “Big Brother 4 is sponsored by McDonald’s.” But there was not a hint that embedded plugs within the show were in fact paid ads.

This is pretty much the norm, and print reporters have taken note. “In the last year or so,” the *New York Times* has observed, “dozens of celebrities, from [Lauren] Bacall to Kathleen Turner to Rob Lowe, have been paid hefty fees to appear on television talk shows and morning news programs and to disclose intimate details of ailments that afflict them or people close to them. Often, they mention brand-name drugs without disclosing their financial ties to the medicine's maker.”<sup>60</sup>

Regarding the use of paid spokespersons on the NBC program *The Other Half*, the *Times* reported that “While the executives were identified as being from Clorox and Hyundai, the hosts

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<sup>55</sup> Mark R. Greer, “Going Hollywood: Beverage Companies Are Dealing with Advertising Overload with Less Traditional Tie-Ins.” *Beverage Industry*, May 1, 2003.

<sup>56</sup> Douglas Durden, “Not-So-Hidden Persuaders; A Word From Your Sponsor Is Now a Part of the Show Itself.” *Richmond Times Dispatch*, August 17, 2002. See Attachment #29.

<sup>57</sup> Steven Theobald, “Teen-Clothing Chain's 46 New Stores Buck Trend.” *Toronto Star*, May 6, 2001. See Attachment #30.

<sup>60</sup> Melody Petersen, “Heartfelt Advice, Hefty Fees.” *New York Times*, August 11, 2002.

made no mention that the visits were part of an advertising arrangement or that the segments were of a different nature than the show's usual fare.”<sup>61</sup>

And regarding a Fox offering called *The Best Damn Sports Show Period*, the *Times* observed, “Viewers are not told the [product placement] appearances are part of advertising arrangement.”<sup>62</sup>

## VII. CONCLUSION

Embedded advertising is the new reality of television, and it is time for the Commission to address it. TV networks and stations regularly send programs into American living rooms that are packed with product placements and other veiled commercial pitches. But they pretend that these are just ordinary programming rather than paid ads.

This is an affront to basic honesty. We urge the Commission to investigate current TV advertising practices regarding product placement and other embedded ads, and to take the steps necessary to restore some honesty and fair dealing to the presentation of these ads, by strengthening the sponsorship identification rules so that ads are properly and prominently identified as ads.

Respectfully submitted,

Gary Ruskin  
Executive Director

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<sup>61</sup> Stuart Elliott, “Hiding a Television Commercial in Plain View.” *The New York Times*, May 24, 2002

<sup>62</sup> Stuart Elliott, “A Word from Our Sponsor? He's Here Now.” *New York Times*, July 1, 2002.