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Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW, Room 159
Washington, DC 20580

**RE: Request for Investigation of Product Placement on
Television and for Guidelines to Require Adequate Disclosure
of TV Product Placement**

Dear Mr. Clark:

This is a request for an investigation of product placement practices on television, and specifically the failure to disclose the embedded advertising that has become increasingly common there. This stealth advertising is misleading to viewers, and it may violate federal prohibitions against unfair and deceptive acts and practices affecting commerce.¹ Such an investigation might lead to actions against individual advertisers, as well as new guidelines for disclosure of product placement on television.

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. The Commission has invoked this principle many times in banning "unfair or deceptive acts or practices in or affecting commerce" as its statutory mission states.

Yet current practice in the broadcast industry violates this principle broadly and systematically. Such violation has become the new way of doing business. It is time for the Commission to acknowledge this new reality, and address it.

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Put simply, TV networks and stations are shifting advertising from commercial breaks to programming itself. They are inserting branded products directly into

¹ 15 U.S.C. § 45(a)(1).

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.

There are numerous reasons for this trend. New technologies such as remote controls and TiVo have enabled viewers to avoid spots that they find obtrusive and annoying. Many viewers are fed up with advertising in general. But most of all, advertisers have found embedded ads to be effective, precisely because viewers are off guard.

“There are a lot of corporations that realize being integrated from a product placement standpoint has a greater value than a 30-second spot,” says Steve Rasnick, vice president of UPP Entertainment Marketing. “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.”²

The interweaving of advertising and programming has become so routine that television networks now are selling to advertisers a measure of control over aspects of their programming.³ Some programs are so packed with product placements that they are approaching the appearance of infomercials. The head of a company that obtained repeated product placements actually called one such program “a great infomercial.”⁴ Yet these programs typically lack the disclosure required of infomercials⁵ to uphold honesty and fair dealing.

This request for investigation and guidelines does not maintain that product placements and other forms of embedded advertising should be banned. It maintains only that advertisers should be honest and up front with the public they are seeking to influence. If a show contains embedded ads then that fact should be clearly labeled. This is especially the case where children are concerned, since they are the most impressionable and vulnerable to this kind of stealth influence.

The Commission should require advertisers to ensure that their product placements on television are disclosed in a conspicuous and unmistakable manner. Their failure to provide such disclosure should be considered “unfair or deceptive acts and practices in or affecting commerce” within the meaning of the Federal Trade Commission Act. It is deceptive because it flies under the viewer’s skeptical radar. It is unfair because it is advertising that purports to be something else.

² 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.

³ 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.

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

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

Product placement is an effort to influence viewers when they tend to be less vigilant and critical. "Movies are better than any commercial that has been run on television or any magazine, because the audience is totally unaware of any sponsor involvement,"⁶ one movie producer wrote to RJ Reynolds Tobacco, regarding a movie he produced in which all the characters smoked on screen.

I. ACTION REQUESTED: THE FTC SHOULD CONDUCT AN INVESTIGATION AND SET GUIDELINES REQUIRING ADVERTISERS TO DISCLOSE PRODUCT PLACEMENTS ON TELEVISION

As mentioned, the Commission should acknowledge that the failure to prominently inform viewers of product placements is unfair and deceptive. It should require advertisers to insist that TV networks and stations prominently disclose to viewers that their product placements are ads. In addition, product placements should be identified *when they occur*, much as print advertisements must be identified *on the ad* when they might be confused with editorial content. This should be in addition to disclosure at the outset of a program.

Such disclosure should be clear and conspicuous. It 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...."

II. THE COMMISSION HAS REPEATEDLY REQUIRED COMPANIES TO DISCLOSE THAT THEIR ADS ARE ADS

Under its mandate to prevent unfair and deceptive advertising, the Commission has long required advertisers to disclose that ads are ads. It has done so in at least three contexts: infomercials, misleading formats and search engines.

Infomercials. The Commission has brought many deceptive advertising cases against producers of infomercials, charging that these productions were deceptive in that they "purported to be independent programming rather than paid ads."⁷ For example, the consent decree in Michael S.

⁶ 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>.

⁷ Michael S. Levey, Docket No. C-3459, Federal Trade Commission, 116 F.T.C. 885, September 23, 1993. See e.g. Nutrivida, Inc., and Frank Huerta, Docket No. C-3826, Federal Trade Commission, September 10, 1998. Bogdana Corp. and Joseph L. Gruber and Bogda Gruber, Docket No. C-3820, Federal Trade Commission, July 28, 1998. Mega Systems International Inc., Docket No. C-3811, Federal Trade Commission, June 8, 1998. National Dietary Research Inc., The William H. Morris Co., and William H. Morris, Docket No. 9263, Federal Trade Commission, 1995 FTC LEXIS 324, November 7, 1995. Olsen Laboratories Inc. et. al., Docket No. C-3556, Federal Trade Commission, 119 F.T.C. 161, February 6, 1995. Wyatt Marketing Corp. Inc., and James R. Wyatt, Docket No. C-3511, Federal Trade

Levey forbids Mr. Levey, a marketer of diet patches, from disseminating any “advertisement that misrepresents, directly or by implication, that it is not a paid advertisement.”⁸

Misleading Formats. The Commission has deemed deceptive the use of formats that made advertisements appear to be an independently written article in a magazine or newspaper.⁹ This is why such formats now carry the label “advertisement.”

Search Engines. Last year, the Commission told Internet search engines to provide “clear and conspicuous disclosures” of paid placement when search results are in reality paid ads in disguise.¹⁰

The reasoning in such cases applies equally to the deceptive format of TV programs containing embedded advertising. In fact such formats would appear to be the paradigm case. When TV networks sell product placements in their programming, the programming itself becomes an advertising vehicle. Without disclosure, stations make an implied representation to viewers that their programming is not what it actually is -- a paid advertisement.

The impact of the product placement, like that of ordinary ads, occurs at the moment of exposure. For this reason disclosure must occur at that same moment, as it does in print ads. To inform viewers of product placements only at the start or end of a show or segment 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.

III. 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.

Commission, 118 F.T.C. 117, July 27, 1994. Synchronal Corp., Docket No. 9251, Federal Trade Commission, 117 F.T.C. 724, May 13, 1994. Del Dotto Enterprises Inc., David P. Del Dotto, and Yolanda Del Dotto, Docket No. 9257, Federal Trade Commission, 117 F.T.C. 446, April 21, 1994. National Media Corp. and Media Arts International Inc., Docket No. C-3441, Federal Trade Commission, 116 F.T.C. 549, June 24, 1993. C C Pollen Co. and Bruce R. Brown, Docket No. C-3419, Federal Trade Commission, 116 F.T.C. 206, March 16, 1993. Richard Crew, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 475, October 16, 1990. Robert Francis, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 496, September 27, 1990. Twin Star Productions Inc, Jerald H. Steer, Allan Singer, Judith Singer, Douglas Gravink, Peter Claypatch and Steven Singer, Docket No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 87, March 13, 1990.

⁸ 58 Fed. Reg. 38768.

⁹ Georgetown Publishing House Limited Partnership, 122 F.T.C. 392 (1996) (consent order).

¹⁰ Federal Trade Commission, correspondence with search engine companies, June 27, 2002, <<http://www.ftc.gov/os/closings/staff/commercialalertattach.htm>>.

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.

The resulting “product integration,” in the term of the trade, is now a regular part of some TV shows. *Entertainment Marketing Letter* explains it as a “presence woven into the plotline -- often across multiple episodes -- accompanied at the very least by a supporting media buy and, at best, by an integrated marketing and public relations campaign replete with a sweepstakes overlay and other consumer touchpoints.”¹¹ CBS has done product integration deals with General Motors, Reebok and Target for *Survivor*, and Fox did product integration deals with Ford and Coca-Cola for *American Idol*.

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."¹²

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.”¹³

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.”¹⁴

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

¹¹ “Incorporating Consumer Promotion Is Key in Maximizing Product Integration on TV.” *Entertainment Marketing Letter*, April 15, 2003. See Attachment #4.

¹² 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 #5.

¹³ 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.

¹⁴ 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.

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.¹⁵

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.¹⁶

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

¹⁵ 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.

¹⁶ Stuart Elliott, "Hiding a Television Commercial in Plain View." *New York Times*, May 24, 2002. See Attachment #8.

episodes of "The Best Damn Sports Show Period," and viewers are not told the appearances are part of advertising arrangements.¹⁷

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."¹⁸ 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."¹⁹

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.²⁰

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.²¹ Similarly, NBC is integrating Avon's new cosmetics line, "Mark," into the plotline of its soap opera, *Passions*.²²

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.²³

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."²⁴

¹⁷ Stuart Elliott, "A Word From Our Sponsor? He's Here Now." *New York Times*, July 1, 2002. See Attachment #9.

¹⁸ Richard Linnett, "Fox Sports Specialty: Product 'Immersion'; Net Inks Tie-Ins With Snapple, Labatt, Lincoln." *Advertising Age*, January 20, 2003. See Attachment #10.

¹⁹ Richard Linnett, "Fox Sports Specialty: Product 'Immersion'; Net Inks Tie-Ins With Snapple, Labatt, Lincoln." *Advertising Age*, January 20, 2003.

²⁰ Louis Chunovic, "Sci-Fi Pioneers Placement Deal; In 'Unique Model' OMD Buys All Tim On Cable Channel's Spring 2004 'Six Days' Miniseries." *Television Week*, June 9, 2003. See Attachment #11.

²¹ 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.

²² Leslie Ryan, "Passions' Product Pitch; NBC, Avon Weave New Cosmetics Line Into Soap Opera's Story." *Television Week*, July 28, 2003. See Attachment #13.

²³ A. J. Frutkin, "Summertime, and Ad-Libbing Is Easy." *New York Times*, July 13, 2003. See Attachment #14.

²⁴ 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,²⁵ dramas,²⁶ sports programs,²⁷ and even news footage.²⁸

IV. 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*.²⁹

That's just one show. There are many others. *Arkansas Democrat-Gazette* writer Celia Story called NBC's *The Restaurant* an “infomercial-ish program.”³⁰ The *Denver Post*'s Bill Husted agreed; the program has the “feel of an infomercial,” he wrote.³¹ Alessandra Stanley of the *New York Times* wrote that *American Idol* had “the feel of a late night infomercial for bodybuilding equipment.”³² Vinay Menon of the *Toronto Star* referred to *American Idol* as “what may have

²⁵ 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.

²⁶ 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 #17.

²⁷ 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 #18.

²⁸ Alex Kuczynski, “On CBS News, Some of What You See Isn't There.” *New York Times*, January 12, 2000. See Attachment #19.

²⁹ Christina Binkley and Emily Nelson, “NBC Casts Vegas Casino in a Starring Role.” *Wall Street Journal*, August 5, 2003

³⁰ Celia Storey, “The Restaurant Portions out Advertisers' Favorite Entrees.” *Arkansas Democrat-Gazette*, August 12, 2003. See Attachment #20.

³¹ Bill Husted, “Coors Tap Flows Freely on TV Show.” *Denver Post*, July 27, 2003. See Attachment #21.

³² 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,"³³ while the *Winnipeg Sun*'s Bill Brioux said that it "may be the world's most expensive infomercial."³⁴

V. 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."³⁵

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."³⁶

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."³⁷

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.³⁸

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

³³ Vinay Menon, "Ruben's Big Night on Idol Plays Small." *Toronto Star*, May 23, 2003. See Attachment #23.

³⁴ Bill Brioux, "Facing the Music; American Idol Wraps up with Two-Hour Finale." *Winnipeg Sun*, May 21, 2003. See Attachment #24.

³⁵ 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.

³⁶ Jason Gay, "At CBS, Les Is More." *New York Observer*, May 19, 2003. See Attachment #26.

³⁷ Janet Stilson, "Placements Push to Front; Wide Range of Advertisers Play More Sophisticated Product Game on Cable." *Advertising Age*, June 9, 2003.

³⁸ MediaPost and InsightExpress, "Product Placements Gaining Momentum." June, 2003.

³⁹ 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.

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.³⁹

VI. 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*.⁴⁰

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%.⁴¹ 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."⁴²

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."⁴³

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*."⁴⁴ (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."⁴⁵

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.⁴⁶

⁴⁰ Stuart Elliott, "Real or Virtual? You Call It; Digital Sleight of Hand Can Put Ads Almost Anywhere." *New York Times*, October 1, 1999.

⁴¹ Vernon Scott, "E.T.' Invades Five More Continents." *United Press International*, November 2, 1982.

⁴² Lisa Marsh, "Blockbuster Season for Product Placements." *New York Post*, May 26, 2002. See Attachment #28.

⁴³ A List Entertainment website, <<http://www.alistentertainment.com/brochurepage2.html>>.

⁴⁴ 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>>.

⁴⁵ Mark R. Greer, "Going Hollywood: Beverage Companies Are Dealing with Advertising Overload with Less Traditional Tie-ins." *Beverage Industry*, May 1, 2003.

⁴⁶ Mark R. Greer, "Going Hollywood: Beverage Companies Are Dealing with Advertising Overload with Less Traditional Tie-Ins." *Beverage Industry*, May 1, 2003.

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."⁴⁷

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."⁴⁸

VII. THERE IS EVIDENCE THAT PRODUCT PLACEMENT IS IMPLICATED IN THE EPIDEMIC OF MARKETING-RELATED DISEASES IN CHILDREN

In 1980, the Commission issued a statement of policy regarding its jurisdiction with respect to unfairness, and its definition of an unfair act or practice. To meet the Commission's test for unfairness, there must be "substantial" consumer injury.⁴⁹

To determine whether such consumer injury exists in the case of product placement on TV, the Commission should consider the role that product placement may play in the epidemic of marketing-related diseases in American children.

American children are suffering from an epidemic of marketing-related diseases,⁵⁰ including obesity,⁵¹ type 2 diabetes⁵² and alcoholism,⁵³ while millions will eventually die from smoking-related illnesses.⁵⁴ Gambling is a serious problem for millions of young people as well.⁵⁵

Children want what they see. Anyone who has raised children, or simply observed them, knows that. When children see things in a media setting designed specifically to trigger their craving, the effect can be overwhelming. An advertising executive told the New York State Assembly in

⁴⁷ 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.

⁴⁸ Steven Theobald, "Teen-Clothing Chain's 46 New Stores Buck Trend." *Toronto Star*, May 6, 2001. See Attachment #30.

⁴⁹ FTC Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, FTC correspondence with The Honorable Wendell Ford and The Honorable John Danforth, December 17, 1980.

⁵⁰ Jonathan Rowe and Gary Ruskin, "The Parents' Bill of Rights: Helping Moms and Dads Fight Commercialism." *Mothering Magazine*, Jan/Feb 2003. See Attachment #31.

⁵¹ Cynthia L. Ogden et al., "Prevalence and Trends in Overweight Among US Children and Adolescents, 1999-2000." *Journal of the American Medical Association*, October 9, 2002. JAMA 2002; 288:1728-1732.

⁵² A.L. Rosenbloom et al., "Emerging Epidemic of Type 2 Diabetes in Youth." *Diabetes Care*, February, 1999; 22(2): 345-54.

⁵³ "Underage Drinking: A Major Public Health Challenge." *Alcohol Alert*, National Institute on Alcohol Abuse and Alcoholism, April, 2003.

⁵⁴ "Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs --- United States, 1995—1999." *Morbidity and Mortality Weekly Report*, April 12, 2002, 51(14);300-3.

⁵⁵ National Gambling Impact Study Commission, Final Report, p. 4-12.

the late '70s that “When you sell a kid on your product, if he can't get it he will throw himself on the floor, stamp his feet, and cry.”⁵⁶

Plentiful evidence suggests that product placement and appearances are especially potent in their effects upon children and adolescents.⁵⁷ For example, a recent study in the British medical journal *Lancet* found that:

viewing smoking in movies strongly predicts whether or not adolescents initiate smoking, and the effect increases significantly with greater exposure. Adolescents who viewed the most smoking in movies were almost three times more likely to initiate smoking than those with the least amount of exposure.⁵⁸

Twenty-six years ago, the Commission noted that children are highly susceptible to the suggestive influences of advertising generally. “[Y]oung children” it said, “(1) fail to understand the nature and profit making purpose of the television commercials [and] (2) tend to trust and believe television advertising indiscriminately.”⁵⁹

The following year, the Commission’s Staff Report on Television Advertising to Children stated that

Many young children – including an apparent majority of those under the age of eight – are so naïve that...they cannot perceive the selling purpose of television advertising or otherwise comprehend or evaluate it and tend, as the FCC has observed, to view commercials simply as a form of ‘informational programming.’⁶⁰

⁵⁶ Jonathan Rowe, “Modern Advertising - The Subtle Persuasion.” *Christian Science Monitor*, January 29, 1987.

⁵⁷ James D. Sargent et al., “Viewing Tobacco Use in Movies: Does It Shape Attitudes that Mediate Adolescent Smoking?” *American Journal of Preventive Medicine*, April, 2002. 22:137-145. Stanton Glantz, “Smoking in Movies: a Major Problem and a Real Solution.” *Lancet*, June 10, 2003. 362(9380):281-285. Madeline A. Dalton et al., “Relation Between Parental Restrictions on Movies and Adolescent Use of Tobacco and Alcohol.” *Effective Clinical Practice*, January/February 2002, 5:1-10. James D. Sargent et al., “Modifying Exposure to Smoking Depicted in Movies: A Novel Approach to Preventing Adolescent Smoking.” *Archives of Pediatric & Adolescent Medicine*, July, 2003. 157:643-648. Stanton Glantz, “Rate Movies With Smoking ‘R’.” *Effective Clinical Practice*, January/February 2002. 5:31-34. PP Gidwani et al., “Television Viewing and Initiation of Smoking Among Youth.” *Pediatrics*, September, 2002. 110(3):505-8. James D. Sargent et al., “Effect of Seeing Tobacco Use in Films on Trying Smoking Among Adolescents: Cross Sectional Study.” *British Medical Journal*, December 15, 2001. 323:1394-7. Jennifer J. Tickle et al., “Favourite Movie Stars, Their Tobacco Use in Contemporary Movies, and its Association with Adolescent Smoking.” *Tobacco Control*, Spring 2001. 10:16-22.

⁵⁸ Madeline A. Dalton et al., “Effect of Viewing Smoking in Movies on Adolescent Smoking Initiation: A Cohort Study.” *The Lancet*, June 10, 2003. 362(9380):281-285.

⁵⁹ Federal Trade Commission, Statement of Reasons for Rejecting the Proposed Guide on Television Advertising of Premiums to Children, 42 Fed. Reg. 15069, 15070 (March 18, 1977).

⁶⁰ Federal Trade Commission, Staff Report on Television Advertising to Children, p.1 (1977).

If conventional advertising works on young psyches in that way, how much more potent are embedded ads that appear to be part of the show? Is it totally coincidental that the products associated with the epidemic of marketing-related diseases are the very ones that the marketing industry has been pushing through stealth ads -- junk food, soda pop, beer, alcohol, and gambling as well?

Embedded ads are yet another way that the advertising industry has contrived to wedge into the relationship between parents and their own children. By sneaking past the guard of even watchful parents, the industry is able to trigger cravings in children for things that parents would not choose and might actively oppose, such as junk food, alcohol and gambling. Parents, and not the advertising industry, should be guides to children's behavior; but parents cannot guide if they don't know what is coming. The Commission owes it to the nation's parents to insist that advertisers are honest with them. Advertisers should state openly when a show contains embedded ads, and they should label the embedded ads whenever they appear. Then, parents can make an informed decision as to whether they want their kids to watch that show or not.

Soda pop. Coca-Cola has been heavily featured in product placements on *American Idol*⁶¹ and the teen-targeted *Young Americans*,⁶² which the New York *Daily News* called "a slick, thinly disguised commercial" for Coke.⁶³ Not surprisingly, Pepsi is featured in the WB show *Pepsi Smash*, and it played a big part in the ABC reality show, *The Runner*.⁶⁴ WB aired *Play for a Billion*, "featuring a set festooned with Pepsi colours, logos and product."⁶⁵ Mountain Dew was showcased in the CBS reality shows *Survivor* and *Survivor II*.

A recent study in the British medical journal *Lancet* found that children who drink more soda are more likely to become obese. The likelihood "increased 1.6 times for each additional can or glass of sugar-sweetened drink that they consumed each day," the study reported.⁶⁶

Fast food. Fast food companies too are larding shows with product placements. McDonald's, for example, is almost as pervasive on the screen as it is on the nation's thoroughfares and in its malls. The chain has a product integration deal with ESPN's *Beg, Borrow and Deal*.⁶⁷ Two

⁶¹ Scott Leith, "Ever-Present Coke the Real Star of 'American Idol.'" *Atlanta Journal and Constitution*, September 4, 2002. See Attachment #32.

⁶² 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 #33.

⁶³ Eric Mink, "WB Yet Again Leans on the 'Young' & Cliched." *New York Daily News*, July 12, 2000. See Attachment #34.

⁶⁴ 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.

⁶⁵ Murray Whyte, "Product Placement is on the Fast Track" *Toronto Star*, June 1, 2003. See Attachment #35.

⁶⁶ David Ludwig et al., "Relation Between Consumption of Sugar-sweetened Drinks and Childhood Obesity: a Prospective, Observational Analysis." *Lancet*, February 17, 2001. *Lancet* 2001; 357: 505-08.

⁶⁷ "Products Find Homes." *Advertising Age*, June 9, 2003. See Attachment #36.

episodes of Universal Television's *Nashville Star* involved trips to McDonald's.⁶⁸ McDonald's coupons and products were featured on the NBC reality TV program *Lost*.⁶⁹ McDonald's was a part of the \$30 million deal between the UPN network and the Omnicom Group.⁷⁰ It had product placements on *Baywatch*, and, according to *Advertising Age*, is seeking more such deals.⁷¹

Other fast food chains are following suit. Taco Bell has a brand integration deal with the Discovery Networks, including the Discovery Channel, TLC and Animal Planet.⁷²

Fast food tends to be fat food. In a study published in the *International Journal of Obesity*, researchers found that, compared to adolescents who did not eat at fast food restaurants, those who ate there three times in the previous week had an astounding 40% higher calorie intake among boys, and 37% higher among girls.⁷³

Beer. Beer companies are in the embedded ad game as well. In a 1999 report called "Self-Regulation in the Alcohol Industry," the Commission itself found alcohol product placement "on eight of the 15 TV shows most popular with teens."⁷⁴ Let us repeat that. More than half off the TV shows most popular with teens had beer brands written into the script.

Anheuser-Busch had product placement deals for Budweiser in *Survivor*⁷⁵ and *Survivor II*.⁷⁶ Rolling Rock, Labatt Blue and Dos Equis are thoroughly integrated into *The Best Damn Sports Show Period*.⁷⁷ Coors meanwhile has extensive product placement on NBC's *The Restaurant*.⁷⁸ *Florida Times-Union* food editor Dan McDonald wrote that what "galls" him about *The Restaurant* is "the blatant product placement." When beer is delivered, "there's a Coors truck.

⁶⁸ "Incorporating Consumer Promotion Is Key in Maximizing Product Integration on TV." *Entertainment Marketing Letter*, April 15, 2003. See also "Chevrolet and McDonald's(R) Join in Hit Series 'Nashville Star' for Brand Integration." News release, *PR Newswire*, March 31, 2003. See Attachment #37.

⁶⁹ Suzanne Vranica, "Marketers Find Partner on 'Lost' Show." *Wall Street Journal*, September 4, 2001. See Attachment #38.

⁷⁰ Suzanne Vranica and Joe Flint, "Omnicom Seeks More for Clients on UPN." *Wall Street Journal*, August 24, 2001. See Attachment #39.

⁷¹ Claire Atkinson, "Madison + Vine: McD's Hears Entertainment Pitches." *Advertising Age*, April 28, 2003. See Attachment #40.

⁷² Hank Kim, "Madison & Vine: Discovery, Taco Bell Sign Ad Pact." *Advertising Age*, September 16, 2002. See Attachment #41.

⁷³ SA French, et al., "Fast Food Restaurant Use Among Adolescents; Associations With Nutrient Intake, Food Choices and Behavioral and Psychosocial Variables." *International Journal on Obesity* (2001): 25, 1823-1833.

⁷⁴ "Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers." *Federal Trade Commission*, September, 1999.

<<http://www.ftc.gov/reports/alcohol/alcoholreport.htm>>.

⁷⁵ "Advertisers Pay to Have Their Products Featured on 'Survivor.'" CBS *The Early Show*, February 15, 2001. See Attachment #42.

⁷⁶ Jennie L. Phipps, "'Survivor II' Raises All Boats at CBS." *Electronic Media*, March 5, 2001. See Attachment #43.

⁷⁷ Richard Linnett, "Fox Sports Specialty: Product 'Immersion'; Net Inks Tie-Ins with Snapple, Labatt, Lincoln." *Advertising Age*, January 20, 2003.

⁷⁸ Alessandra Stanley, "Chef Special Is Product Placement." *New York Times*, July 19, 2003. See Attachment #44.

When a beer is poured, it's from a Coors tap.”⁷⁹ Gail Pennington of the *St. Louis Post-Dispatch* asked, “What is this, an infomercial?”⁸⁰

Tobacco. The 1998 Master Settlement Agreement between certain tobacco companies and state officials prohibits paid product placement of tobacco on television.⁸¹ The most recent FTC Cigarette Report states that the six largest cigarette manufacturers “reported” that they have honored this agreement, and that they

did not solicit the appearance of any cigarette product in any motion picture or television show, or grant permission for the appearance of any cigarette product in any motion picture or television show.⁸²

However, the product placement of tobacco products on television continues in the form of movies produced before 1990. Such tactics are unsurprising. An internal 1989 Philip Morris marketing plan explained “We believe that most of the strong, positive images for cigarettes and smoking are created and perpetuated by cinema and television.”⁸³

Plus, there is evidence that embedded tobacco advertising on television may continue to this day, through a loophole in the Master Settlement Agreement. Robert Adler, a professor of legal studies at the University of North Carolina at Chapel Hill, argues that there may be “unpaid” product placement of tobacco products – unpaid in the sense that free samples may be provided, not cash payments, in exchange for the product placement. “According to product placement industry insiders,” Adler writes, “most product placement -- up to 90 percent or more -- is ‘unpaid.’”⁸⁴

If this is so, it is an egregious breach of faith on the part of the tobacco industry. At the very least, the Commission should insist that any product placement of tobacco on television should be prominently and concurrently disclosed as advertising. This should be the case whether the embedded ad is paid or not, or paid for with money or with free samples of tobacco products, or paid through intermediaries or not, and whether or not a particular brand is mentioned. It is *smoking* that the industry seeks to promote. The particular brand comes later.

⁷⁹ Dan MacDonald, “Here's a Tip: Skip This Silly ‘Restaurant.’” *Florida Times-Union*, August 7, 2003. See Attachment #45.

⁸⁰ Gail Pennington, “Mitsubishis on the Menu; Product Placement Takes a Leap Forward with NBC's ‘The Restaurant.’” *St. Louis Post-Dispatch*, August 3, 2003. See Attachment #46.

⁸¹ “No Participating Manufacturer may ... make, or cause to be made, any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product or any other item bearing a Brand Name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ...” Master Settlement Agreement, <http://www.naag.org/upload/1032468605_cigmsa.pdf>.

⁸² Federal Trade Commission Cigarette Report for 2001. <<http://www.ftc.gov/os/2003/06/2001cigreport.pdf>>.

⁸³ Kelly Weedon Shute Advertising. “Philip Morris Cigarette Marketing, a New Perspective.” November, 1989. <<http://www.smokefreemovies.ucsf.edu/problem/bigdoc.html>>.

⁸⁴ Robert Adler, “Here's Smoking at You, Kid: Has Tobacco Product Placement in the Movies Really Stopped?” *Montana Law Review*, Summer, 1999, 60 Mont. L. Rev. 243.

A study in *Pediatrics* last year confirmed that there is a dose-response relationship between television-viewing and youth initiation of smoking. According to the study, youth who watched more than five hours of television per day were nearly six times more likely to start smoking than those who watched less than two hours per day.⁸⁵

It need hardly be said that smoking is a major public health problem. Each day, more than 2,000 adolescents begin to smoke, and about half of them will have their lives cut short due to tobacco-related illnesses.⁸⁶

Gambling. Casinos, too, are using embedded ads on TV. In August, the *Wall Street Journal* reported on a show, called *Fear Factor*, that centers on 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.⁸⁷

The casino's management is clear on the intent of the *Fear Factor* show. "It's a great infomercial," said Mr. Glenn Schaeffer, president of the Mandalay Resort Group. The casino's Las Vegas-based ad agency, R&R Partners, estimated that the one-hour "Fear Factor" is worth more than \$10 million in paid advertising.⁸⁸

Gambling has been creeping down the age ladder in American society.⁸⁹ The National Gambling Impact Study Commission reported that as many as 20 percent of adolescents might already have a gambling problem.⁹⁰ The Commission cited a Harvard Medical School study which estimated that 7.9 million American adolescents are problem or pathological gamblers.⁹¹

⁸⁵ Pradeep P. Gidwani et al., "Television Viewing and Initiation of Smoking Among Youth." *Pediatrics*, September, 2002. 110(3):505-8.

⁸⁶ Stanton Glantz, "Smoking in Movies: a Major Problem and a Real Solution." *Lancet*, June 10, 2003. 362(9380):281-285. Citing BRFSS Coordinators, "Projected Smoking-Related Deaths Among Youth -- United States." *Morbidity and Mortality Weekly Report*, November 8, 1996. 45: 971-4, <<http://www.cdc.gov/epo/mmwr/preview/mmwrhtml/00044348.htm>>.

⁸⁷ Christina Binkley and Emily Nelson, "NBC Casts Vegas Casino in a Starring Role." *Wall Street Journal*, August 5, 2003

⁸⁸ Christina Binkley and Emily Nelson, "NBC Casts Vegas Casino in a Starring Role." *Wall Street Journal*, August 5, 2003

⁸⁹ "Teen Gambling Rising; Survey Calls It the 'Silent Addiction.'" *Chicago Tribune*, August 16, 1998.

⁹⁰ National Gambling Impact Study Commission, Final Report, p. 4-12.

⁹¹ National Gambling Impact Study Commission, Final Report, p. 4-1, citing Howard Shaffer, "Estimating the Prevalence of Disordered Gambling Behavior in the United States and Canada: A Meta-Analysis," (1997), p. 51.

The Commission's conclusion -- that the "prevalence of adolescent gambling is a serious problem"⁹² -- is measured in the extreme. The glamorization of the casino lifestyle through such shows as *Fear Factor*, and the stealth ads for casino gambling that they contain, cannot be helping.

VIII. THE COMMISSION SHOULD DETERMINE WHETHER CURRENT DISCLOSURE OF TV PRODUCT PLACEMENT IS SO INADEQUATE THAT THE ADS CONSTITUTE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE

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 McDonald's 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."⁹³

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 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."⁹⁴

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."⁹⁵

IX. 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

⁹² National Gambling Impact Study Commission, Final Report, p. 7-25.

⁹³ Melody Petersen, "Heartfelt Advice, Hefty Fees." *New York Times*, August 11, 2002.

⁹⁴ Stuart Elliott, "Hiding a Television Commercial in Plain View." *The New York Times*, May 24, 2002.

⁹⁵ Stuart Elliott, "A Word From Our Sponsor? He's Here Now." *New York Times*, July 1, 2002.

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 requiring concurrent disclosure that the ads are, in fact, ads.

Respectfully submitted,

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