

Congress of the United States
Washington, DC 20515

September 26, 2007

The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Mr. Chairman:

We are writing with respect to the increasing use of product placement and product integration in broadcast and cable television. In our view the blurring of the line between advertising and content represented by product placement and integration is unfair and deceptive if it occurs without adequate disclosures to the viewing public. In some extreme cases, it may also undermine the integrity of the television programming itself.

As you know, product placement involves the physical appearance of a product in a television show while product integration is the embedding of a commercial product or service into the very plot of a show. These growing advertising techniques use a TV viewer's emotional connection to a program and its characters to build or reinforce brand loyalty and to influence purchasing decisions.

The House Subcommittee on Telecommunications and the Internet held a hearing on May 10, 2007, which addressed, in part, the issues of product placement and product integration. At that hearing, Mr. Phil Rosenthal, the creator and executive producer of the CBS comedy "Everybody Loves Raymond," testifying on behalf of the Writers Guild of America West and the Screen Actors Guild, highlighted the growing pressure on the television industry to interweave commercial pitches into plots by showing a clip from the family drama "Seventh Heaven," wherein Oreo cookies were a major plot point in two separate episodes.

The changes in the marketplace and technology that are fueling the increased use of these advertising techniques are underscored in a December 2006 study by Nielsen Media Research. Nielsen's report indicated that in homes with digital video recorders ("DVRs"), 40 percent of broadcast television viewing occurs using the DVRs, and roughly one-half of the homes watching television in play-back skip the commercials. To mitigate against this so-called "TiVo effect" and the resulting loss of traditional advertising skipped by viewers who time-shift, the television and cable networks are integrating sponsors into the shows themselves, rather than relying solely on advertising during commercial breaks.

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The resulting rise in product placement and product integration has been dramatic in recent years. For example, Mr. Rosenthal also testified that there were more than 4,000 instances of product integration on network television in 2006. Moreover, according to PQ Media, a consulting firm that tracks product placement, this market (not including the market for product integration) is expected to grow to \$2.7 billion in the United States in 2007, with television serving as the “dominant choice of brand marketers.”

In addition, the video clip shown at the Subcommittee hearing reinforced the concern that if the use of product placement and product integration places marketing objectives ahead of creative interests, the programmer risks undercutting the artistic and educational value of the television show. In fact, such action risks blurring the content and advertising lines of a show so completely that the end result may differ little from many of today’s program-length infomercials. Such a result would be contrary to the public interest in [my/our] view.

As the use of product placement and product integration in television programs continues to expand, broadcasters and cable operators should comply in a meaningful way with their statutory obligation to identify what entity is behind sponsored programming and what product is being pitched. The Commission’s role is vital in this area because in the marketplace an advertiser will place greater value in having the viewer think that the product is part of the program, and not a paid advertisement.

Importantly, Congress has protected television viewers’ right to know who is trying to influence them commercially in a programming context since the beginning of the broadcast era. For instance, Section 317 of the Communications Act of 1934 (the “Act”) requires broadcast licensees to make an announcement whenever they air material for which they have received a payment or other consideration. 47 U.S.C. § 317(a)(1). The Commission extended all of these requirements to cable operators when they air programming that is within their exclusive control. 47 C.F.R. § 76.1615(c). Moreover, Section 507 of the Act also imposes disclosure obligations on those involved in producing, preparing, or supplying material intended for broadcast. 47 C.F.R. § 507. If any such person receives or provides consideration for the inclusion of program matter, the law requires disclosure up the chain of production and distribution. A broadcast licensee that receives such a disclosure must announce the sponsor even if the licensee did not receive payment. 47 U.S.C. § 317(b). As a result, any instance of product placement and product integration must be coupled with disclosures to viewers to satisfy these longstanding requirements of Federal law.

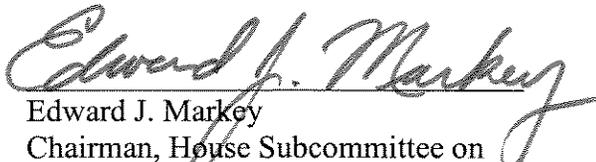
We commend you for your recent statement that you intend to conduct a proceeding on these matters and we encourage you to commence such action soon. We believe the Commission should examine the growth in product placement and product integration and how this trend affects the overall composition and nature of television programming. As part of this inquiry, the Commission should also review the criteria broadcasters and cable operators

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currently use to distinguish between commercial and creative content. This proceeding should review the Commission's rules governing sponsorship disclosure. In particular, the Commission's examination should ensure that its rules sufficiently achieve the statutory requirement to inform the viewing public of the actual products being sponsored in a show as well as the entity that paid for such sponsorship. Finally, the Commission should propose and effectuate any adjustments to its rules as necessary to correct any deficiencies found during its proceeding.

Thank you for your time and attention to this matter. If you have any questions, please feel free to call us or have your staff contact Maureen Flood (Markey) at 202-226-2424 or Pat Delgado (Waxman) at 202-225-3976.

Sincerely,


Edward J. Markey
Chairman, House Subcommittee on
Telecommunications and the Internet


Henry A. Waxman
Chairman, House Committee on
Oversight and Government Reform