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October 7, 1994

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Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition for Clarification of Section 317 Regulation
Concerning Continuous Sponsorship Identification for
Program-Length Commercials, RM No. 7984

Dear Mr. Caton:

On behalf of the National Infomercial Marketing Association ("NIMA"), I am submitting this letter to set forth the reasons why the Commission should deny the relief requested in the September 8, 1994 letter of the Center for the Study of Commercialism, et al., supplementing their January 3, 1992 Petition to require continuous sponsorship identification for program-length commercials.

The petitioners have taken the introduction of a new syndicated program entitled "Main Floor" as an opportunity to reargue their prior position. They argue that "Main Floor" is deceptive, because it allegedly fails to disclose the true identity of its sponsors. On this basis, the petitioners contend that the Commission should issue an immediate public notice, advising broadcast licensees and cable operators carrying this program that contemporaneous sponsorship identification of each sponsored segment on that program may be required to insure that viewers are fully and fairly informed as to its true sponsorship. They also renew their request that the Commission initiate a rulemaking to revise its rules to require continuous sponsorship identification for all program-length commercials.

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The complaint about the "Main Floor" program appears to be based on press reports about the program, which may or may not be accurate.¹ Petitioner's letter contains no facts that suggest any reason why the Commission should initiate a rulemaking to reconsider its rules concerning sponsorship identification for infomercials. As set forth in greater detail in our comments of June 10, 1992, petitioners have failed to provide evidence of a problem that is not being addressed adequately under the current rules or a concern of such significance as to justify an allocation of the Commission's scarce resources to this area.

1. Petitioners are confusing their concerns with one show with the broader policy issues regarding the Commission's sponsorship identification rules. Even if there were valid concerns with this particular program, that fact would not justify reconsideration of the Commission's policy in this entire area.

As set forth in our June 10, 1992 comments, many of the concerns that sparked initial attention to program-length commercials have long since been resolved. Most infomercials carried on broadcast stations today comply with the NIMA Marketing Guidelines. The Guidelines require that each infomercial should be preceded and concluded with a clear and prominent written or oral announcement that the program is a paid advertisement for a particular product. The Guidelines further require that program-length commercials fully and fairly inform

¹ For example, the letter states that the only identification of the sponsor of the program occurred at the end. However, the version of the program we reviewed also contained, before two of the three segments of the show, explicit oral statements that the segment was partially supported by an identified advertiser, whose products were featured in that segment. The names of the two companies that provided such support also were visually displayed at the conclusion of the program.

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viewers of the commercial nature and sponsor of the program. The Guidelines also require explicit identifiers at the critical moments of any infomercials when direct consumer orders are solicited that the viewer is watching a paid advertisement for the product.

Accordingly, there is no justification for reconsideration of the Commission's rules applicable to program-length commercials generally because of allegations of inadequate identification in one, isolated program.

2. To the extent petitioners are concerned that one particular show is deceptive, their complaints should be directed to the Federal Trade Commission ("FTC"), which has primary jurisdiction over charges of false or deceptive advertising. The FTC maintains an active and aggressive program to deter deceptive formats and false or misleading claims in program-length commercials. In particular, the FTC has brought action on several occasions against programs that allegedly had deceptive formats designed to deceive viewers into believing they were not watching commercial programming.² If the petitioners believe that the format of "Main Floor" results in consumer deception, they should address that concern to the FTC, which has the expertise and experience to resolve such questions.

3. The supplemental letter is in many respects a rehash of a longstanding issue concerning product placements in advertisements, rather than a problem involving the adequacy of disclosure of the sponsor of a program-length commercial. Nothing in the letter justifies initiation of a rulemaking to

² JS&A Group, Inc., FTC Docket No. C-3248 (Consent Order Feb. 24, 1989) (paid advertisement disguised as independent consumer news program); Twin Star Productions, Inc., FTC Docket No. C-3307 (Consent Order Oct. 2, 1990); Nu-Day Enterprises, FTC Docket No. C-3380 (Consent Order April 22, 1992); Wyatt Marketing Corp., FTC Docket No. C-3510 (Consent Order July 27, 1994).

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reconsider Commission policies in the program-length commercial area, much less the imposition of a continuous sponsorship identification requirement.

For these reasons, NIMA respectfully submits that the Commission should reject the petition and should conclude that the September 8th supplement provides no basis for initiating a rulemaking to reconsider its policy concerning sponsorship identification for program-length commercials.

Sincerely,

Handwritten signature of Jeffrey D. Knowles in cursive script, with the initials "JFC" written at the end of the signature.

Jeffrey D. Knowles
Counsel to National Infomercial
Marketing Association

JFC:JDK:vcl