Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	MB Docket No. 08-90
Sponsorship Identification Rules	)	
and Embedded Advertising	)	
	)	

COMMENTS OF GROUPM WORLDWIDE, INC.

GroupM Worldwide, Inc. appreciates the opportunity to submit these comments to the Federal Communications Commission ("FCC") in response to the proposed changes to the FCC's sponsorship identification rules. GroupM and its affiliate agencies, including MindShare, MAXUS, MediaCom and Mediaedge:cia, strongly support the goal of responsible marketing and the FCC's periodic review of its regulations.

As the world's leading global media investment management operation, GroupM has considerable experience and insight regarding the use of product placement and product integration in various media. GroupM is committed to growing and evolving the product placement industry, and both we and our clients support the FCC's stated goal of ensuring that television viewers and radio listeners know when they are being advertised to and by whom.

Having evaluated the proposed changes and contemplated their likely impact on both advertisers and content providers, GroupM urges the FCC to decline the invitation to adopt more restrictive regulations regarding the practice referred to in its Notice of Proposed Rule Making as "embedded advertising." The proposed regulations set forth in the FCC's Notice of Proposed Rule Making go above and beyond the clear purpose of the existing rules, which is to protect the public from insidious advertisements. Today's audiences have grown up with embedded advertising and, by consequence, do not need to be constantly alerted to a marketing practice that is fully transparent and causes them no identifiable harm. The proposed disclosure requirements ignore this familiarity with embedded advertising and instead require that audiences be visually and aurally alerted to otherwise obvious product placements. These heavy-handed measures will distract audiences from the dramatic and/or comedic elements of their favorite radio and television programs, thereby making embedded advertisements wholly unappealing to broadcasters, advertisers and audiences. Accordingly, the proposed measures will have an unnecessary chilling effect on an advertiser's ability to use this increasingly valuable advertising technique and, in so doing, threaten the continued viability of free television and radio content. For these reasons and the reasons set forth below, we urge the FCC to decline an invitation to change these regulations.

I. The Origins and Ultimate Purpose of Sections 317 & 507 of the Communications Act of 1934.

Sponsorship identification requirements have been an integral part of U.S. telecommunications policy since the development of the medium and formation of the FCC. The FCC's current sponsorship identification rules find their genesis in the payola scandals of the late 1950s, in which it was revealed that various radio stations and disc jockeys had accepted payment in exchange for broadcasting musical recordings. Unsurprisingly, the parties to these payola arrangements did not disclose the fact that compensation had been paid and therefore deceived listeners into believing that the songs at issue were selected based on merit. As a result of this scandal and the congressional hearings that followed, sections 317 and 507 of the Communications Act were amended to require broadcasters to disclose whether airplay for a song had been purchased.

As amended, Section 317 of the Communications Act requires that broadcasters disclose to their listeners or viewers if content has been aired in exchange for money, services or other valuable consideration and that this announcement be made when the content at issue is broadcast.[1] Section 507 of the Communications Act requires that anyone who provides or receives money, services or consideration in exchange for including matter in a broadcast must disclose the arrangement in advance of the broadcast so that broadcasters may comply with their announcement obligations under Section 317 of the Communications Act.[2]

Similarly, Sections 73.1212 and 76.1615 of the Commission's rules require broadcasters to make sponsorship announcements, including the identity of the sponsor, at the time of broadcast. The Commission's rules, however, do not require sponsorship identification when the sponsorship of a commercial product is considered obvious. Despite this exception, broadcasters typically choose to comply with these rules and the Communications Act by conspicuously identifying sponsors at the end of a radio or television program.

In view of both the history and the clear language of these regulations, it is apparent that the ultimate purpose of these rules is to combat corruption and public deception and not, as some consumer watch-dog groups have argued, to ensure that creative content is separated from commercial content. These regulations reflect the fundamental underpinning of U.S. communication law and policy, namely, to foster a robust marketplace of ideas with minimal governmental intervention. Even the FCC, in its Notice of Proposed Rule Making, acknowledges this narrow purpose, noting that the rules are "designed to protect the public's right to know the identity of the sponsor when consideration has been provided in exchange for airing programming."[3] Given that broadcasters are currently obligated to disclose, and consistently do disclose, that content has been aired in return for consideration, it is indisputable that the existing FCC rules suit this purpose. Moreover, unlike the aforementioned payola arrangements in which the marketers controlled the creative content itself (i.e., whether a song was played or not), embedded advertisements are merely a discreet element of creative content (i.e. a television or radio broadcast) over which broadcasters have ultimate authority, approval and control. Accordingly, there is absolutely no reason why these well-respected advertising techniques should be held to a higher standard than the considerably more insidious payola arrangements that served as the impetus for these rules.

II. Product Placement and Integration are Well-Accepted and Valuable Advertising Techniques.

In view of the scrutiny that embedded advertising has recently received, one might infer

[1] 47 U.S.C. § 317.

[2] 47 U.S.C. § 507.

[3] Sponsorship Identification Rules and Embedded Advertising, MB Docket No. 08-90.

that product placement and product integration are new and potentially pernicious industry developments. In truth, the business of product placement preceded the advent of television and radio[4] and has been integral to the development of both mediums. The birth of commercial radio in the 1930s was dominated by sponsored programming and in-program product mentions, as evidenced by such popular programs as *The Jell-O Program* starring Jack Benny and *The Johnson Wax Program with Fibber McGee and Molly.* Sponsored programming and product placements were also common during the early age of television in the late 1940s, with shows such as *Texaco Star Theater*, *The Philco TV Playhouse*, *Kraft Television Theatre*, as well as various soap operas being underwritten by corporate sponsors. As distinct from traditional commercials, embedded advertising provided broadcasters with a means of setting off their ever-increasing production costs without disrupting their audience's listening or viewing experience, thereby enabling broadcasters to attract increased audiences to these burgeoning mediums.

Despite the well-established history of product placement and integration in American radio and television, embedded advertisements have customarily played second fiddle to traditional commercials which exist separate and apart from the broadcaster's creative content. This structure, along with the entire state of the broadcasting industry, has changed considerably over the last decade. With availability of more programming options, as well as increased competition from other forms of visual entertainment such as videogames, DVD subscription services, Internet television, and pay-per-view programming, many broadcasters have experienced considerable pressures to maintain viewership while providing valuable news, information and entertainment programming to U.S. audiences at no cost. Moreover, the introduction of digital video recording devices (DVRs) have dramatically changed television viewing habits and undermined the effectiveness of the traditional thirty-second commercial, which in turn, has made it increasingly difficult for broadcasters to finance the production of high quality news, information and entertainment programming. In response to this shortfall, broadcasters have been forced to develop entirely new revenue sources, including DVD sales, program downloads, online broadcasts and product placement opportunities. Thus, the recent growth in product placement is indicative of an industry-wide effort at self-preservation.

Advertisers, like broadcasters, have also struggled to adapt to changes in the industry. Having similarly recognized that thirty-second commercials no longer have the same reach and impact they once did, advertisers have diversified their advertising expenditures to include more product placement and product integration opportunities. As a result of this industry movement, viewers now encounter judges sipping Coke products on *American Idol*, contestants on *Survivor* vying for cans of Mountain Dew, and the entire audience of the *Oprah Winfrey Show* driving home in new Pontiac automobiles. Consumer products have also made their way into the storylines of scripted programs, with the protagonist of *24* racing to battle terrorists in his Ford Expedition, the staff of *The Office* congregating at a Chili's restaurant, and the teens of *Gossip Girl* attending an upscale party sponsored by Vitamin Water.

The truth of the matter is that viewers who encounter product placement are fully aware of the fact that they are being marketed to, since product placement is neither novel nor particularly subtle. As previously noted, American audiences have grown up with embedded advertising, and

[4] In 1896 the Lumière brothers entered into a distribution and production agreement in which they agreed to showcase Lever Brothers' "Sunlight Soap" product in their silent films. Similarly, Thomas Edison's early films were interwoven with pitches for his clients' passenger trains.

can therefore appreciate the fact that consumer products do not appear in television programming out of chance but because of advertiser spending. Moreover, advertisers' product placements must be sufficiently obvious so as to be recognized by audiences and, in turn, merit the costs associated which such placements. In fact, advertisers frequently pair product placements or product integrations with traditional thirty-second commercials. This pairing reinforces the commercial nature of the product placement and supplements the standard sponsorship disclosures at the end of a program. In view of this practice, it is apparent that advertisers are taking all reasonable steps to make the commercial nature of embedded advertising obvious to consumers.

If audiences were truly unable to "distinguish content from advertising"[5] advertisers would be wasting their budgets by marketing to individuals too engrossed in a storyline to recognize their products. The clear distinction that does exist, and must exist, between content and advertising is underscored by a recent episode of *30 Rock* in which a prolonged conversation between Alec Baldwin and Tina Fey regarding the many attributes of a new Verizon Wireless phone ends with Ms. Fey's character tuning to the camera and asking "Can we have our money now?" Thus, while it may be true that advertisers are employing more sophisticated means of incorporating commercial messages into traditional programming, it is highly unlikely that these messages are going unnoticed by audiences.

Finally, it must be noted that the practice of product placement and product integration does absolutely nothing to harm viewers. Viewers who encounter references to a brand of soft drink, automobile, or cellular phone during the course of their favorite programming are not being harmed or misled in any way; they are simply encountering a form of advertising that has existed since the turn of the last century. Like traditional commercials, embedded advertising enables broadcasters to continue to produce radio and television programming without having to demand payment from their audience. While embedded advertising has admittedly become more commonplace in recent years, this popularity is the result of changes in technology and viewing habits that have lessened the effect of traditional advertising, a reality to which broadcasters have been forced to adapt. To assert that this practice is somehow indicative of a "race to the bottom where television shows become program-length infomercials,"[6] however, is to ignore the long history of embedded advertising and the considerable costs associated with producing radio and television programming. In truth, the only real harm would be if Americans were unable to access radio and television programming free of charge, and this is precisely the type of harm that embedded advertising has prevented and continues to prevent.

III. Certain Amendments Under Consideration Raise Substantial First Amendment Concerns and Would Unnecessarily and Negatively Impact Creative Development

A. The Proposed Amendments Would Negatively Impact Viewers and Broadcasters.

The FCC's Notice of Proposed Rulemaking seeks comments on whether concurrent disclosures, book end disclosures and/or aural disclosures are necessary to address new

[5] Statement of Commissioner Jonathan S. Adelstein on Sponsorship Identification Rules and Embedded Advertising, MB Docket No. 08-90.

[6] *Id.*

developments in the use of embedded advertising techniques. For the reasons stated below, these overly restrictive disclosures are unwarranted and would significantly intrude upon the audience's television experience.

In September of 2003, the consumer watch-dog group Commercial Alert filed complaints with the FCC and the FTC urging the agencies to investigate product placement practices on television and set guidelines regarding sponsorship disclosure (hereinafter, "Commercial Alert 2003 FCC Petition" and "Commercial Alert 2003 FTC Petition" or, collectively, "Petitions").[7] In these Petitions, Commercial Alert requested clear and conspicuous disclosures of product placement and integration at the beginning and end of the programming ("Book End Disclosures"), such as an announcement at the outset of the program that "This program contains paid advertising for...". As if Book End Disclosures were not enough, Commercial Alert also asked that disclosures be made concurrently ("Concurrent Disclosures") with any product placement or product integration. Specifically, Commercial Alert requested that Concurrent Disclosures reading "Advertisement" be displayed whenever a product placement appears on the television screen.

Notably, the Petitions failed to even consider the disruptive effect these disclaimers would have on the television viewing experience. For example, the superimposition of the word "Advertisement" on the screen would likely distract even the most dedicated viewer from the storyline. Aural disclosures such as "This program contains paid advertising for..." would similarly distract viewers from creative content and likely cut into valuable storytelling time.

Studies indicate that viewers do not have an issue with product placement in television programming so long as it does not interfere with their viewing experience - such as when the disclosures appear at the end of the programming in accordance with the FCC's sponsorship identification rules.[8] While viewers generally do not care that the *American Idol* judges drink from Coke cups during the program, they would likely be annoyed if a flashing "Advertisement" disclaimer appeared on screen and distracted them from their favorite singers or from Simon Cowell's latest critique. Viewers would also be outraged if the final scene of their favorite program was deleted (e.g., the final narrative scenes in *Desperate Housewives* or *Grey's Anatomy*) to allow for a "paid product placement" aural disclosure at the end of the program.

As previously noted, product placement in programming has increased over the last several years in response to the introduction of DVRs and the rise of competing entertainment options. The growth of product placement and integration opportunities has made television advertising more appealing to advertisers and provided broadcasters with an invaluable revenue stream. Should these proposed disclosures be adopted, however, embedded advertising would become wholly unpalatable to viewers and, in turn, force advertisers to abandon the practice altogether. If this significant revenue stream were taken away through overreaching regulations, it would have a devastating effect on advertisers' and broadcasters' business models, particularly with no

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[7] Letter from Gary Ruskin, Executive Director, Commercial Alert, to Marlene H. Dortch, Sec'y, Fed. Commc'ns Comm'n (Sept. 30, 2003), available at http://www.commercialalert.org/fcc.pdf; Letter from Gary Ruskin, Executive Director, Commercial Alert, to Donald Clark, Sec'y, Fed/. Trade Comm'n (Sept. 30, 2003), *available at* http://www.commercialalert.org/ftc.pdf.

[8] A recent survey conducted by Simmons Market Research Bureau, Inc. indicates that 50% of viewers don't mind product placements in television programs. In addition, an *Entertainment Weekly* survey of 1,000 Americans, 66 percent of respondents said they do not care about or mind product placement. http://www.ew.com/ew/article/0,,20213119,00.html.

comparative revenue streams on the horizon.

B. Requiring Concurrent Disclosures Would Constitute a Ban on Embedded Advertising and Raise Substantial First Amendment Concerns.

While all of the proposed disclosure requirements raise significant First Amendment implications, the concurrent disclosure requirement is by far the most pernicious as it would likely result in a ban of constitutionally-protected product placement in television programming. As discussed below in more detail, the concurrent disclosure requirement patently fails to satisfy the four factor test developed for lawful, non-deceptive advertising outlined in *Central Hudson Gas & Elec. v. Public Serv. Comm'n*, 447 U.S. 557 (1980).

Under the first *Central Hudson* factor, the expression at issue must be lawful and non-misleading protected speech. As previously noted, product placement is a longstanding and legitimate form of commercial speech that dates back to the turn of the last century. In addition, and as the FTC confirmed in its official response to the Commercial Alert 2003 FTC Petition (hereinafter, "FTC Response to Commercial Alert Petition"), product placement by itself is not inherently deceptive.[9] Accordingly, product placement is lawful speech protected by the First Amendment.

Under the second *Central Hudson* factor, the government's asserted interest must be substantial. Despite the so-called claims by Commercial Alert and other advocates that product placement is harmful to viewers, there is absolutely no evidence that product placement results in viewers giving more credence to objective claims about the advertised products' attributes. Despite providing numerous examples of product integration in television programming, Commercial Alert and other advocates have failed to identify any public harm caused by watching *American Idol* judges sipping from Coke cups, or *24*'s Jack Bauer saving the world in a Ford Expedition. Rather, this advocacy movement is based on general animosity towards advertising and commercialization, which provide broadcasters with the financial means to produce free radio and television programming.

In the absence of any evidence of public harm, Commercial Alert and other advocates have focused their attention on children. For example, in its 2003 FTC Petition, Commercial Alert argued that inadequate sponsorship disclosures have contributed to "the epidemic of marketing related disease in children," including obesity, alcoholism and smoking.[10] Commercial Alert, however, provided no evidence to back up these allegations, including evidence demonstrating the prevalence of product placement in children's advertising and/or whether it has any effect on childhood obesity or other diseases.[11] This absence of substantiation is unsurprising, as there is

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[9] Letter from Mary K. Engle, Associate Director for Advertising Practice, to Gary Ruskin, Commercial Alert, February 10, 2005, http://www.ftc.gov/os/closings/staff/050210productplacemen.pdf.

[10] It is unclear why Commercial Alert would focus on smoking, as the tobacco industry is prohibited from marketing to children pursuant to the 1998 Master Settlement Agreement. Similarly, the Code of Responsible Practices for Beverage Alcohol Advertising and Marketing prohibits the distilled spirits industry from advertising to children. Thus, to the extent there is any product placement by the tobacco or alcohol beverage industry, it did not take place in children's programming.

[11] Even the programs singled out by Commercial Alert, namely *Lost, Big Brother, Fear Factor,* and *Survivor*, do *not* meet the FCC's definition of children's programming. Commissioner Jonathan S. Adelstein's Statement on Sponsorship Identification Rules and Embedded Advertising, MB Docket No. 08-90, similarly cites programs that

scarce (if any) evidence linking product integration to childhood disease. Moreover, in light of recent self-regulatory developments regarding advertising to children, as set forth in Section IV(D) below, including the major food and beverage advertisers committing to not engage in product placement in children's programming, the so-called link between product placement and childhood diseases is even less plausible.

The third *Central Hudson* factor also cuts against Concurrent Disclosures, as there is no evidence that Concurrent Disclosures would advance the government's asserted interest. In the absence of any data showing the prevalence of product placement in what the FCC's deems to be children's programming and a link between product placement in children's programming and childhood disease, there is no basis to believe that more prominent disclosures in product placement would help curb the childhood obesity epidemic or other childhood diseases. Similarly, in the absence of evidence that viewers are not cognizant of product placement, there is no evidence that Concurrent Disclosures would result in a greater understanding of paid programming and sponsorships.

The final *Central Hudson* factor – whether the proposed regulations are more extensive than necessary to serve the government's asserted interest – similarly finds against concurrent disclosure requirements. As set forth in more detail in Section IV below, modifications to the existing sponsorship identification regulations are unwarranted in light of the present regulatory structure which ensures a clear distinction between content and commercialism. Not only do the existing FCC regulations ensure that advertisers who pay for placement are disclosed in the programming, but both the FTC and various self-regulatory organizations provide additional layers of regulation.

Most seriously, the proposed disclosure requirements will distract from the artistic expression of entertainment programs and have a chilling effect on this constitutionally protected form of speech. Several programs such as NBC's *The Office* have successfully woven product placement into the storylines, such as Dunder Mifflin crew from *The Office* celebrating the Dundie awards at a Chili's. Not only would Concurrent Disclosures disrupt the flow of the programming and distract viewers from the content, but it would certainly take away from the viewer's enjoyment and the dramatic effect of the programming. As such disclosures would infringe upon the entertainment value, as well as the monetary value of the program, advertisers and television programs would most likely stop using this method of advertising. Accordingly, the sweeping effect of the proposed regulations would be tantamount to a ban on First Amendment protected speech without any indication that it will achieve the intended goal.

As a matter of First Amendment jurisprudence, the government treads on very shaky ground in restricting one particular form of speech, however truthful, to further such an ill-defined regulatory goal. Accordingly, we urge the FCC to reject inappropriate bans on particular advertising methods that may be unpopular to certain segments of the public interest community.

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do not meet the FCC's definition of children's programming, such as *American Idol* and *The Biggest Loser*, for his justification as to why product placement harms children's health.

IV. Existing Statutory and Regulatory Framework Ensures the Public is Aware of Sponsored Messages

A. The Current FCC Rules Adequately Alert Viewers to Product Placement and Integration.

The current FCC rules, which require that broadcasters conspicuously disclose when content has been aired in return for consideration, effectively alert viewers to instances of product placement and integration. The adequacy of the existing rules is perhaps best underscored by the fact that the various consumer groups petitioning for changes to the FCC rules have provided absolutely no evidence of viewers being deceived or confused by embedded advertisements. Equally telling, these groups have not provided a single example of an advertiser or broadcaster failing to comply with these rules. Given that product placements are consistently being disclosed to and understood by viewers, there is absolutely no basis for additional regulations.

B. Current FCC Policies Help Children Distinguish Between Advertisements and Program Content.

The FCC's current policies also sufficiently protect children from over-commercialization and the blurring of the line between content and advertising. Pursuant to the Children's Television Programming Act (6 F.C.C. Rcd. 5529, 5530 (1991)), commercial television broadcast licensees and cable operators must limit the amount of commercial matter that airs during programs directed to children under 12 to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays. The FCC also has longstanding policies that are designed to protect children from confusion that may result from the interweaving of content and advertisement. For example, the FCC has adopted policies for product placement with respect to children's programming (programming originally produced and aired primarily for an audience of children under 13 years old or younger). For instance, the FCC has a long standing policy against "program length commercials" (programs associated with a product, in which commercials for that product have aired) and against "host selling" (the use of program talent to deliver commercials, including endorsements or selling by animated cartoon characters as well as "live" program hosts). According to the FCC, any children's programming associated with a product, in which that product aired, is a "program-length commercial." Thus, if the program exceeds the FCC's time limits on commercial matter in children's programming, it could expose the station to enforcement action.

For years these rules have been effective in protecting children from over-commercialization and the blurring of the line between advertising and content. Particularly, in light of the self-regulatory measures taken by children's advertisers discussed in Section IV(C)(2), there appears to be no basis at this time to modify these long-standing rules.

C. The FTC Also Monitors Potentially Unfair or Deceptive Embedded Advertisements.

The FCC is not alone in its efforts to monitor and regulate the evolving product placement industry. The FTC also has a unique understanding of the issues associated with this emerging industry, having previously responded to the Commercial Alert 2003 Petition demanding that the

FTC mandate Book End and Concurrent Disclosures.[12] In its Petition to the FTC, Commercial Alert contended that an advertiser's failure to disclose its product placements in such a "conspicuous and unmistakable" manner constitutes a violation of Section 5 of the Federal Trade Commission Act ("FTC Act"). The FTC refused to adopt Commercial Alert's argument, noting that in the absence of any evidence that consumers gave more credence to objective claims about a product's attributes when made in the programming, there was no rationale for disclosing that an advertiser paid for a product placement. The FTC further concluded that a rule requiring an "Advertisement" disclosure was unwarranted because the FTC can take action against false and misleading claims made through product placement pursuant to Section 5 of the FTC Act.

Like the FCC, the FTC also has authority to challenge embedded advertisements that are deceptive or unfair. Specifically, the FTC can prohibit or modify such infringing advertisements under its Section 5 authority, as well as impose substantial remedies to prevent further deception through cease and desist orders, injunctions, consumer redress, disgorgement and fines. In fact, the FTC 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.[13] In light of the FTC's concurrent authority to monitor and prevent deceptive and unfair product placements, it would seem unnecessary for the FCC to unilaterally adopt such sweeping disclosure requirements.

D. Industry Self Regulation Also Promotes Compliance With the Rules.

In November 2006, the Children's Advertising Review Unit ("CARU"), the children's arm of the self-regulatory industry, revised its Self-Regulatory Guidelines for Children's Advertising to expressly address paid product placement. Specifically, the revised CARU Guidelines prohibit practices in televisions whereby (i) "Program personalities, live or animated, should not be used to advertise products, premiums, or services in or adjacent to television programs primarily directed to children under 12 years of age in which the same personality or character appears"; and (ii) "Products derived from or associated with television programs primarily directed to children under 12 years of age should not be advertised during or adjacent to that program."

Notably, during the CARU review process, CARU considered a ban of all product placement in children's programming. However, due to the complexity of the issues involved, the CARU review group chose instead to have further discussions on the issue before rendering a guideline on product placement. Because additional changes to the CARU Guidelines with respect to product placement in children's programming will likely be forthcoming, it would be premature for the FCC to impose overly burdensome disclosure requirements on advertisers.

Upon announcing the revised CARU Guidelines, the Council of Better Business Bureaus ("CBBB") also announced the creation of the Children's Food and Beverage Initiative ("CFBAI"). The CFBAI is comprised of fourteen of the largest food and beverage companies – which account for the majority of food and beverage expenditures directed toward children – all of whom have

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[12] *See* Letter from Gary Ruskin, Executive Director, Commercial Alert, to Donald Clark, Sec'y, Fed/. Trade Comm'n (Sept. 30, 2003), *available at* http://www.commercialalert.org/ftc.pdf.

[13] *See* Michael S. Levey, Docket No. C-3459, Federal Trade Commission, 116 F.T.C 885, (September 23, 1993) (barring Mr. Levey, a marketer of diet patches, from disseminating "[a]ny advertisement that misrepresents, directly or by implication, that it is not a paid advertisement").

agreed to, among other things, refrain from engaging in food and beverage product placement in program content in children's programming. Thus, the major food and beverage advertisers are no longer engaging in any product placement to children.

While advocates of Concurrent Disclosures cite to the childhood obesity crisis as basis for further government regulation, the FTC has consistently held that self-regulation and not government regulation is the most effective weapon against childhood obesity. Most recently, in July 2008, the FTC issued a report to Congress on "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation" (hereinafter, "FTC Food Marketing Report to Congress")[14], which referred to progress on the self-regulatory front and did not advocate federal government intervention at this time.[15]

By virtue of the fact that most food and beverage advertisers do not engage in product placement in children's advertising, it is doubtful that product placement is contributing to the children's health crisis in this country. Certainly any connection is tenuous at best and should not be the impetus for imposing over-reaching disclosure obligations on advertisers.

Conclusion

We would be happy to facilitate the gathering of further information from the industry that might be of interest to the agency on these important issues. Certainly, based on what we know today, new regulations or restrictions on product integration are not advisable.

Thus, for the reasons set forth herein, we ask the FCC to reject any proposal that would require modifications to an advertiser's disclosure requirements in paid product placement.

Respectfully submitted,

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[14] http://www.ftc.gov/opa/2008/07/foodmkting.shtm.

[15] Notably, in his Statement regarding Sponsorship Identification Rules and Embedded Advertising, MB Docket No. 08-90, Commissioner Jonathan S. Adelstein cites to a study that found that the industry spends more than $10 billion per year marketing food to children. However, the FTC Food Marketing Report to Congress notes the actual amount was far less - closer to $1.6 billion, a figured which covered adolescents as well as children.