

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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*In the Matter of* ) MB Docket No. 10-190  
)  
Campaign for a Commercial Free Childhood’s )  
Petition for Declaratory Ruling that a Program )  
to be Aired by Nicktoons Violates the )  
Children’s Television Act and the FCC’s Rules )  
and Policies )

**COMMENTS OF FREE PRESS**

Free Press respectfully submits these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) request for comment on Campaign for a Commercial Free Childhood’s (CCFC) Petition for Declaratory Ruling.<sup>1</sup> Free Press urges the Commission to grant CCFC’s Petition and issue a ruling determining that Skechers’ *Zevo-3* television show is a program-length commercial and that airing *Zevo-3* on the cable and satellite channel Nicktoons is a violation of the Commission’s longstanding rules and guidelines limiting the amount of commercial matter that may be aired during children’s television programming.

Free Press has long been concerned with the effects of undisclosed, deceptive, and misleading commercial content in cable and broadcast television. In 2006 and 2007 Free

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<sup>1</sup> See Public Notice, *Media Bureau Action: Comment Dates Established for Campaign for a Commercial Free Childhood Petition for a Declaratory Ruling that a Program to be Aired by Nicktoons Violates the Children’s Television Act and the FCC’s Rules and Policies*, DA 10-1762, MB Dkt 10-190 (Sept. 22, 2010); *Campaign for a Commercial Free Childhood’s Petition for Declaratory Ruling*, MB Dkt 10-190 (filed Sept. 14, 2010) (“Petition”).

Press, along with the Center for Media and Democracy, sent three complaints to the Commission regarding the use of undisclosed Video News Releases (VNRs) by broadcasters and cablecasters.<sup>2</sup> In 2008, Free Press submitted comments in a Commission proceeding seeking comment on the sufficiency of the FCC's sponsorship identification rules and in light of the increased use of embedded advertising practices in television media.<sup>3</sup> In 2009 Free Press joined a coalition of 50 organizations, including consumer groups and children's advocates, asking the FCC to strengthen its rules to address the increasing use of inadequately disclosed embedded advertising in television programming.<sup>4</sup> Finally, Free Press recently submitted a letter to FCC Chairman Genachowski regarding *Los Angeles Times* reports concerning the disturbing practice of placing undisclosed commercials in broadcast television newscasts and programming.<sup>5</sup> The use of undisclosed or inadequately disclosed commercials in programming designed for adult audiences is unacceptable. However, such practices are particularly offensive when used in programming directed towards the most vulnerable television viewers – *children*.

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<sup>2</sup> See *First Complaint of Free Press and Center for Media and Democracy* (April 6, 2006), available at [http://www.freepress.net/files/fcc\\_complaint\\_4-06-06.pdf](http://www.freepress.net/files/fcc_complaint_4-06-06.pdf); *Second Complaint of Free Press and Center for Media and Democracy* (Nov. 14, 2006), available at [http://www.freepress.net/files/final\\_vnr\\_letter\\_nov06.pdf](http://www.freepress.net/files/final_vnr_letter_nov06.pdf); and *Third Complaint of Free Press and Center for Media and Democracy* (Oct. 11, 2007), available at [http://www.freepress.net/files/oct2007\\_fcccomplaint.pdf](http://www.freepress.net/files/oct2007_fcccomplaint.pdf).

<sup>3</sup> See *Comments of Free Press*, MB Dkt 08-90 (filed Nov. 21, 2008).

<sup>4</sup> See *Letter to Chairman Genachowski from Health, Media, and Child Advocates Supporting FCC Regulation of Embedded Advertising*, MB Dkt 08-90 (Sept. 23, 2009).

<sup>5</sup> See *Letter to Chairman Genachowski from Free Press*, MB Dkt 08-90 (filed Sept. 27, 2010).

**I. Congress and the Commission Have Long Sought to Protect Children from Manipulative and Confusing Advertising Practices in Children’s Television Programming**

For decades both Congress and the FCC have recognized that children comprise an audience to whom media providers, such as television broadcasters and cable operators, owe a special duty with regard to advertising practices and commercialization. Where industry has failed to adequately self-regulate, federal policy makers have promulgated specific rules to protect children from the harmful effects of advertising. In its *1974 Children Television Report and Policy Statement*, the FCC adopted important restrictions on the use of character marketing and product placement in children’s programming based on a finding that “most young children do not understand that there is a ‘commercial’ incentive for the use of these products and that it is, in fact, a form of merchandising.”<sup>6</sup> Specifically, the Commission adopted a policies requiring a clear separation between children’s programming and advertising, limiting the amount of commercials, and restricting host-selling or the use of program characters to promote products.<sup>7</sup>

Sixteen years later, Congress revisited the harms associated with unfair advertising directed at children with the passage of the Children’s Television Act of 1990.<sup>8</sup> Citing children’s “unique vulnerability to commercial persuasion,”<sup>9</sup> Congress determined that “total reliance on marketplace forces is neither sufficient nor justified to

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<sup>6</sup> *1974 Children’s Television Report and Policy Statement*, 50 FCC 2d 1, ¶55 (1974) (“*1974 Policy Statement*”).

<sup>7</sup> *Id.* at ¶¶39, 52, 53.

<sup>8</sup> Children’s Television Act of 1990, Pub. L. No. 101-437 (1990).

<sup>9</sup> H.R. REP. NO. 101-385, at 6 (1989), *as reprinted in* 1990 U.S.C.C.A.N. 1605 (“House Report”).

protect children from potential exploitation by advertising or commercial practices.”<sup>10</sup> Congress directed the FCC to adopt rules limiting commercials in children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays,<sup>11</sup> and to initiate proceedings to define and limit program-length children’s commercials.<sup>12</sup> Subsequently, the FCC adopted two definitions of program-length commercials: “a program in which a product associated with the program appears in commercial spots not separated from the start or close of the program;” and, “a program in which a product or service is advertised within the body of the program.”<sup>13</sup> The Commission affirmed that any children’s program deemed to be a program-length commercial would count toward the statutory commercial limits applied to broadcast licensees and cable operators.<sup>14</sup> These limits were extended to satellite television operators in 2004.<sup>15</sup>

## **II. The Airing of *Zevo-3*, a Program Based on Characters Specifically Designed to Advertise Skechers’ Shoe Products to Children, Contravenes the Goals of Congress and the FCC to Shield Children from Exploitative Advertising Practices**

Given Congressional and Commission efforts to protect children from excessive and confusing use of commercial content in children’s programming, the airing of a cartoon show featuring spokes characters developed and previous used solely as logos for an advertising campaign would appear to violate both the letter and the spirit of these

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<sup>10</sup> *Id.*

<sup>11</sup> Children’s Television Act of 1990, 47 USC § 303a; 47 C.F.R. § 76.225.

<sup>12</sup> Children’s Television Act of 1990, 47 USC § 303b.

<sup>13</sup> *In the Matter of Policies and Rules Concerning Children’s Television Programming*, 6 FCC Rcd 2111, ¶44, 45 (1991). (*CTA Implementation Order*).

<sup>14</sup> *Id.* at ¶ 44 and n. 127.

<sup>15</sup> *Direct Broadcast Satellite Public Interest Obligations Sua Sponte Reconsideration*, 19 FCC Rcd. 5647, ¶44 (2004); 47 C.F.R. § 25.701(e).

longstanding protections. To this end, Nicktoons’ launch of the *Zevo-3* – a program which promotes specific Skechers’ shoe product lines – is particularly alarming.

As explained by CCFC in its *Petition*, *Zevo-3* is a new children’s television cartoon program designed for children thirteen and under, thus, falling within the Commission’s definition of children’s programming.<sup>16</sup> It is produced by Skechers Entertainment, a subdivision of Skechers, Inc., a shoe retailer. The title characters of the show are three superheroes, each of whom embodies a product line of Skechers’ children’s shoes. As CCFC notes, “[a]ll three superheroes were originally created to promote specific lines of Skechers children's shoes and have been featured in television commercials and promotional comic books for children over the past four years.<sup>17</sup> The cartoon characters all wear shoes from the product lines they represent, and most importantly, CCFC notes that “[p]rior to the broadcast of *Zevo-3* these characters could only have been known to children as commercial logos for Skechers.”<sup>18</sup>

It is patently unreasonable to expect children to distinguish between these character’s roles as advertising icons and their roles in *Zevo-3*. These characters are inextricably associated to the specific products they were designed to promote, and indeed these characters are themselves advertisements for the Skechers product line they represent. As such, the use of these commercial symbols in a children’s programming constitutes *de facto* embedded advertising, which the Commission has determined would

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<sup>16</sup> For the purpose of the FCC commercial limitations, “children’s programming” is defined as programming developed and directed at children 12 and under. *CTA Implementation Order*, 6 FCC Rcd 2111, ¶3.

<sup>17</sup> *CCFC Petition* at 2.

<sup>18</sup> *Id.* (emphasis added).

“run afoul of [its] separation policy because there would be no bumper between programming content and advertising.”<sup>19</sup>

Additionally, because the *Zevo-3* characters are used exclusively to sell Skechers shoes, the show appears to be a “program in which a product or service is advertised within the body of the program”<sup>20</sup> under the FCC’s second definition of a program length commercial. Accordingly, under the FCC rules the entire *Zevo-3* program is half hour program-length commercial in violation of the advertising limits set out in the Children’s Television Act.<sup>21</sup>

### **Conclusion**

The Commission must protect children who are uniquely at-risk from the confusing and exploitive use of advertising logos posing as cartoon characters in children’s programming. The Nicktoon’s airing of *Zevo-3* contravenes longstanding FCC policies and rules designed to shield these vulnerable viewers from the harmful effects of manipulative advertising practices. Accordingly, Free Press urges the Commission to promptly grant Campaign for a Commercial-Free Childhood’s Petition for Declaratory Ruling and to grant all other relief as may be just and proper.

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<sup>19</sup> *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket No. 08-90, 23 FCC Rcd 10682, ¶16 (2008)

<sup>20</sup> *CTA Implementation Order*, 6 FCC Rcd 2111, ¶ 44.

<sup>21</sup> While the Commission has recognized that “a program-length commercial of a duration under the commercial limits would not by definition violate the limits,” because *Zevo-3* is a half hour long program, it would necessarily exceed the FCC’s 10.5 and 12 minute commercial limitation for weekends and weekdays, respectively. *See CTA Implementation Order*, 6 FCC Rcd 2111, ¶46.

Respectfully Submitted,

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