



Advertising and Promotions Law

ALERT
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FCC Seeks Comment on Product Placement Regulations

On June 27, the Federal Communications Commission issued a Notice of Inquiry and a Notice of Proposed Rulemaking relating to product placement (which the agency refers to as "embedded advertising"). The agency is seeking comments on product placement, including product placement in children's programming, and proposed to amend existing sponsorship identification rules to require disclosures of a certain size that remain on screen for a particular amount of time. Comments are due September 22, 2008.

Current sponsorship identification rules apply to programming when consideration has been provided in exchange for airing the program. These rules require that an announcement occur once during a program and remain on the screen long enough to be read or heard by an average viewer.

In the Notice of Proposed Rulemaking, the FCC proposed making the required disclosure more obvious to consumers by requiring that the disclosure have lettering of a particular size and remain on air for a particular amount of time. The FCC did not propose specific lettering size or duration for each announcement, but the agency asked for comments on whether the disclosures required for political advertising should be applied to all sponsorship identification announcements. Disclosures for political advertising for candidates must have lettering equal to or greater than four percent of the vertical picture height and remain on air for not less than four seconds. Disclosures for a political broadcast involving a controversial issue of public impor-

tance that is longer than five minutes must be displayed at the beginning and the end of the program.

The Notice of Proposed Rulemaking also seeks comments on whether the existing rules governing children's programming "adequately vindicate the policy goals underlying the Children's Television Act" and, if not, what additional steps should the FCC take to regulate embedded advertising in programming directed to children. Existing rules, "designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming," limit the amount of commercial material in each hour of children's programming and require broadcasters to use separations or "bumpers" between children's programming and commercials. The agency acknowledges that "embedded advertising in children's programming would run afoul of our separation policy because there would be no bumper between programming content and advertising" and asks whether that prohibition should be made explicit in its rules.

The Notice of Inquiry, which does not lead to a rulemaking procedure, seeks comments on "current trends in embedded advertising and the efficacy of the Commission's existing sponsorship identification rules in protecting the public's right to be informed in light of these trends." Questions in the Notice of Inquiry include how often are embedded advertising practices occurring and in what form; are modifications to the sponsorship identification rules warranted to address new developments in the use of

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embedded advertising techniques; should the FCC require disclosures during a program when sponsored products and/or services are being displayed and should the disclosures be both visual and aural; would requiring concurrent on-screen disclosures infringe on the artistic integrity of entertainment programming that contains embedded advertising; and should sponsorship identification rules be applied to feature films broadcast on television (currently, the FCC does not apply sponsorship identification rules to feature films that are produced initially and primarily for theatrical exhibition).

For more information on the content of this alert, please contact a member of Loeb & Loeb's Advertising and Promotions Group.

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