

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Sponsorship Identification Rules and Embedded Advertising*, MB Docket No. 08-90.

Today's *Notice of Proposed Rulemaking* addresses head-on a concern I have pushed for many years: the need to clarify our sponsorship identification rules. It also addresses concerns at the heart of my Agenda to Protect American Children and Families,¹ specifically whether our current rules governing commercials in children's programming need to be updated to adequately protect children from embedded advertising.

"Reality TV" should mean informing viewers about who is secretly pitching to them in the TV shows they are watching. The true reality is that news and entertainment alike are practically being turned into undisclosed commercials. Many current practices fly in the face of viewers' legal right to know who is pitching to them.

After more than three years since I originally called on the Commission to update our sponsorship identification rules and to clarify the application of these rules to children's programming,² I am pleased that we are finally seeking comment on what additional steps the Commission should take. Just this month, I have spoken twice about the urgency to move this item forward and explained the need for the Commission to protect our children from marketers' efforts to prey upon their unsuspecting minds. Despite longstanding majority support, including Chairman Martin's commendable leadership, the release of this *Notice* has suffered from almost unprecedented delays.

The *Notice* takes an important step in addressing the concerns that parents, experts, and I have been voicing for years about the unhealthy messages American media are feeding our kids. Children under the age of eight simply do not recognize that ads are trying to persuade them and tend to accept them as true and unbiased.³ Given that the majority of TV ads targeted to kids are for food products,⁴ and that the ad industry spends more than \$10 billion per year in marketing food to them,⁵ it is no surprise that studies have linked commercials to the dramatic increases in childhood obesity and associated health problems like diabetes.⁶ Because children are ill-equipped to identify advertising, especially when it is embedded in a program with their favorite character,⁷ we need to review and update our sponsorship identification rules. Those of us who are concerned about children need to show leadership, not foot-dragging, in addressing these practices.

¹ Remarks of Commissioner Jonathan S. Adelstein, "Stuck in the Mud: Time to Move an Agenda to Protect America's Children," June 11, 2008. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-282885A1.pdf

² Remarks of Commissioner Jonathan S. Adelstein, "Fresh is Not as Fresh as Frozen:" A Response to the Commercialization of American Media," May 25, 2005. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-258962A1.pdf

³ See Dale Kunkel, "Children and Television Advertising," *Handbook of Children and the Media*, ed. Dorothy G. Singer & Jerome L. Singer (Thousand Oaks, CA: Sage Publications, 2001): 375-393.

⁴ *Id.*

⁵ Comm. On Food Mktg. & the Diets of Children & Youth, Inst. Of Med., *Food Marketing to Children and Youth: Threat or Opportunity?* 145 (J. Michael McGinnis et al. eds., The National Academies Press 2006), available at <http://www.nap.edu/books/0309097134/html/R1.html>.

⁶ See Kaiser Family Foundation, *The Role of Media in Childhood Obesity* (Menlo Park: Kaiser Family Foundation, 2004), <http://www.kff.org/entmedia/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=32022>, generated April 4, 2005.

⁷ See Angela J. Campbell, *Food Marketing to Children and the Law*. 39 LOY. L.A. L. REV. 447, 465 (2006).

I am also pleased that today's *Notice* has adopted the suggestion I made in 2005 to define what is meant by "disclosure" in our sponsorship identification rules. Many current practices make a mockery of our regulatory requirement that consumers have a right to "full and fair" disclosure.⁸ If it takes a magnifying glass to see a tiny acknowledgement whizzing by the screen at the end of a show, that is evading the spirit of the law. More clarification is clearly needed. The main accomplishment of this *Notice* is that it seeks to establish specific guidelines addressing the nature of the disclosure, including font size of the sponsorship credits and the amount of time they are aired. The need for updating the disclosure rules is critical. Not only do we need to help parents protect their children from over-commercialism, we need to ensure that all Americans have the tools necessary to separate the programming wheat from the advertising chaff.

I would have liked to have gone further in asking more questions in the *NPRM*, rather than shunting them off to a *Notice of Inquiry*. We should not be afraid to put all options on the table. As Congressmen Markey and Waxman noted in their September 26, 2007 letter to the FCC regarding this proceeding, as embedded advertising expands, sponsorship identification law must evolve to ensure that broadcasters and cable operators comply in a meaningful way. Because an *NOI* cannot lead directly to rule making, the result may be a piecemeal approach to reforming these rules.

Embedded advertising is increasing at a staggering rate, and we must examine how to update the rules in a comprehensive fashion. Product placement on broadcast TV rose at an annual rate of almost 40 percent in the first quarter of 2008, with reality shows *The Biggest Loser* and *American Idol* each embedding over three thousand product placements during that time.⁹ Also, major networks have created client-facing divisions specifically focused on how best to embed advertisers' messages and products into programming. In the age of convergence, the line between promotional and editorial voices has been blurred. Viewers engrossed in the story are not likely to apply critical thinking to identify advertising. Even if they do look for sponsorship ID, it is nearly impossible to detect them in the single, instantaneous period they roll by in the credits at the end of the program.

Such inadequate disclosure is bad for content, democracy, and our children's health. When viewers cannot distinguish content from advertising, the market check on content quality fails, and we see a race to the bottom where television shows become program-length infomercials. We have heard from the Writers Guild about this – writers are upset about being told to write story lines around advertisements.¹⁰ Further, when audiences are fooled into believing they are watching real news by video "news releases" and so-called news analysts who are paid off, their trust in the discourse shapers – the news broadcasters, TV writers, and DJs – suffers and so does the marketplace of ideas.¹¹ The public deserves to know what it is watching, and democracy demands it. This *Notice* makes real progress in helping ensure those goals are met.

While it does not accomplish everything I would have liked, we are moving in the right direction by adopting this *Notice* to consider improvements to our sponsorship identification and children advertising rules. Accordingly, I approve this item.

⁸ 47 CFR 73.1212(e)

⁹ Amy Schatz, *Product Placements Get FCC Scrutiny*, WALL ST. J., June 23, 2008, at B3.

¹⁰ See Writers Guild of America, *Are You Selling to Me?: Stealth Advertising in the Entertainment Industry* (2005).

¹¹ See Ellen P. Goodman, *Stealth Marketing and Editorial Integrity*, 85 TEX. L. REV. 83, 125 (2006).