



July 2, 2008

MEMORANDUM TO CLIENTS

Re: FCC Proposes Changes to Sponsorship ID Requirements and Seeks Comment on Product Placement

Comments Due: 60 Days After Publication in *Federal Register*

The FCC has released a Notice of Inquiry and Notice of Proposed Rule Making (“Notice”) that seeks comment on whether to revise its rules governing sponsorship identification of broadcasts and cablecasts, especially whether rule changes are necessary in the wake of a reported increase in product placement, also known as “embedded advertising.” Of particular importance, the FCC asked whether regulation of product placement should extend to cable programmers.

The Notice also seeks comment on whether all sponsorship ID announcements should conform to the standards imposed on political advertisements with respect to the size of the lettering (4% of vertical picture height) and length of screen time on-air (at least 4 seconds).

With respect to “embedded advertising,” the FCC seeks input on a petition filed by a public interest group that recommends requiring broadcasters and cable operators to make sponsorship ID announcements at the beginning of each program as well as concurrently with any product placement. Specifically, the Notice asks for specifics on how such a requirement would be applied, especially with respect to radio programs and broadcasts and cablecasts of feature films originally produced for theaters. In the alternative, the Notice asks whether product placement – including on-air reads by radio DJs – is “obvious” as a legal matter, therefore making such programming exempt from the sponsorship ID rules. The Notice also seeks comment on whether a concurrent disclosure mandate would so greatly interfere with programming as to be tantamount to a governmental ban on product placement, in violation of the First Amendment. Finally, the Notice asks whether any revisions should be made in connection with children’s programming, including whether product placement runs afoul of the rule requiring a “bumper” between programming content and advertising.

Commissioners Copps and Adelstein objected to the manner in which the Notice was structured, because only the issues of changing the lettering/on-screen airtime of the announcements, the impact of embedded advertising on the children’s TV rules, whether to extend product integration regulation to cable programmers and whether on-air radio DJ endorsements trigger sponsorship ID requirements were included in the Notice of Proposed Rule Making. Accordingly, the FCC may revise its rules only with respect to those issues. All other

Memorandum to Clients
July 2, 2008
Page 2

issues are contained within the Notice of Inquiry, meaning the FCC would have to issue a separate Notice of Proposed Rule Making with respect to them before any permanent changes could become effective.

Comments in this proceeding are due 60 days after they appear in the *Federal Register*. If you would like assistance in the preparation of comments to be filed at the FCC, or have any questions regarding the FCC's sponsorship identification rules, please contact this office.

FLEISCHMAN AND HARDING LLP

200401.1