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programs, in exchange for substantial fees or other consideration. This advertising technique, called “product placement,” has become closely integrated into program plots, to the point that the line between programming and “infomercials” has become increasingly blurred. Some commentators see no line at all.

There are numerous reasons for this trend. New technologies such as remote controls and TiVo have enabled viewers to avoid spots that they find obtrusive and annoying. Many viewers are fed up with advertising in general. But most of all, advertisers have found embedded ads to be effective, precisely because viewers are off guard.

“There are a lot of corporations that realize being integrated from a product placement standpoint has a greater value than a 30-second spot,” says Steve Rasnick, vice president of UPP Entertainment Marketing. “Irrespective of what ad agencies tell you, there’s a falloff in a commercial. People get up, they change the channel and TiVo gets around commercials altogether, so by being integrated into the program, you have a large, captive audience -- and an interested one.”<sup>2</sup>

The interweaving of advertising and programming has become so routine that television networks now are selling to advertisers a measure of control over aspects of their programming.<sup>3</sup> Some programs are so packed with product placements that they are approaching the appearance of infomercials. The head of a company that obtained repeated product placement -0iby 5cTiad of a comr.vct p3

Product placement is an effort to influence viewers when they tend to be less vigilant and critical. "Movies are better than any commercial that has been run on television or any magazine, because the audience is totally unaware of any sponsor involvement,"<sup>6</sup> one movie producer wrote to RJ Reynolds Tobacco, regarding a movie he produced in which all the characters smoked on screen.

**I. ACTION REQUESTED: THE FTC SHOULD CONDUCT AN INVESTIGATION AND SET GUIDELINES REQUIRING ADVERTISERS TO DISCLOSE PRODUCT PLACEMENTS ON TELEVISION**

As mentioned, the Commission should acknowledge that the failure to prominently inform viewers of product placements is unfair and deceptive. It should require advertisers to insist that TV networks and stations prominently disclose to viewers that their product placements are ads.

disguise.<sup>19</sup>

The reasoning in such cases applies equally to the deceptive format of TV programs containing embedded advertising. In fact such formats would appear to be the paradigm case. When TV networks sell product placements in their programming, the programming itself becomes an advertising vehicle. Without disclosure, stations make an implied representation to viewers that their programming is not what it actually is -- a paid advertisement

advertising.

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Commission, 118 F.T.C. 117, July 27, 1994. Synchronal Corp., Docket No. 9251, Federal Trade Commission, 117 F.T.C. 724, May 13, 1994. Del Dotto Enterprises Inc., David P. Del Dotto, and Yolanda Del Dotto, Docket No. 9257, Federal Trade Commission, 117 F.T.C. 446, April 21, 1994. National Media Corp. and Media Arts International Inc., Docket No. C-3441, Federal Trade Coj0.001 Tc 0.0004 Tw 1a16304 213 C

Like conventional advertising, product placement deals usually are arranged through an intermediary. Often it is an agency that specializes in these deals, such as UPP Entertainment Marketing, Feature This!, or Norm Marshall & Associates. Companies hire the agency to promote their products on TV and in the movies. Typically, the agency reviews TV and movie scripts to identify product placement opportunities, and then helps negotiate agreements between producers and clients.

The resulting “product integration,” in the term of the trade, is now The resulting in (size 10 0 791 to 3.y0015 shows. explains it as a “presence woven into the plotline -- often across multiple episodes -- accompanied at the very least by a supporting media buy and, at best, by an integrated marketing and public relations campaign replete with a sweepstakes overlay and other consumer touchpoints.”<sup>11</sup> CBS has done product integration deals with General Motors, Reebok and Target for

TV programs such as NBC's *Today* show and the *Today* show, often without disclosing that they were paid by pharmaceutical companies, or had other financial ties to them.<sup>15</sup>

A similar use of paid spokespersons was a regular feature of the NBC program *Today*. The show offered "the chance to buy guest spots for their products and executives," the *Today* show observed. "[R]epresentatives from advertisers like Clorox, Hyundai Motor America and even Tan Towel, a 'self-tanning towelette,' appear on the show as part of the regular programming," The *Today* show continued:

During the Clorox-sponsored segment, for example, the hosts... faced off against members of the studio audience in a make-believe game show about housekeeping. And on the segments paid for by Hyundai, a company marketing executive offered tips on buying and leasing cars. A Hyundai vehicle was on stage for each of the four segments and on the final one, which appeared Wednesday, the company gave away a vehicle to the winner of an online sweepstakes.

While the executives were identified as being from Clorox and Hyundai, the hosts made no mention that the visits were part of an advertising arrangement or that the segments were of a different nature than the show's usual fare...

The sponsored segments were formally identified as such only at the end of each show, when during the closing credits the words "Promotional consideration provided by," followed by the name of the segment sponsor, appeared briefly on screen.<sup>16</sup>

The Fox Sports Network is a leader in high-intensity product placement, which it refers to by the revealing term "immersion." Last year, Levi Strauss paid Fox Sports to feature Dockers pants on their show, *Levi's* w59614 Tm (tified as such on72 150.9308460.5612

episodes of "The Best Damn Sports Show

Princeton Video Image has developed a technology to insert “virtual advertising” into TV footage of all sorts. TV networks are using the technology to insert product placements into reruns of syndicated TV programs,<sup>25</sup>



been the highest-rated infomercial in television history,"<sup>33</sup> while the 's Bill Brioux said that it "may be the world's most expensive infomercial."<sup>34</sup>

## V. THE USE OF PRODUCT PLACEMENT IS GROWING

This trend shows no sign of abating. To the contrary, as the line between programming and infomercials blurs, the practice is spreading rapidly. "[A]lmost every channel contacted" observed "says product placement is on the rise."<sup>35</sup>

Leslie Moonves, the chairman and CEO of CBS, recently told the , "There's going to be much more product placement." Moonves continued:

We did it with obviously. They're doing it with . I saw , Steven Spielberg's movie -- that had more product placement than any TV show I've ever seen. So my phrase is, 'If it's good enough for Spielberg, it's good enough for us.' So you're going to see more and more of that - - you're going to see cars incorporated into shows, and instead of Ray Romano, sitting there with a can of nondescript soda, he'll be drinking a Diet Pepsi. That's going to happen."<sup>36</sup>

The practice has become so endemic that Fox now has a senior VP for integrated sales and marketing. Barry Schwartz, the current occupant of that position, says that roughly 10 programs on his networks use product placement. However, "next year, we'll probably do 20, and I could be conservative with that number."<sup>37</sup>

Media planners second that. A recent survey of 750 of these executives by InsightExpress and MediaPost found that 18 percent of them negotiated a product placement deal during the previous 6 months, but 26% anticipated negotiating a product placement deal during the next six months. That's an increase of 37 percent.<sup>38</sup>

There are indications that parts of the industry are moving towards eliminating separate spots entirely. The WB Network planned such a program, tentatively titled or

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<sup>33</sup> Vinay Menon, "Ruben's Big Night on Idol Plays Small." , May 23, 2003. See Attachment #23.

<sup>34</sup> Bill Brioux, "Facing the Music; American Idol Wraps up with Two-Hour Finale." , May 21, 2003. See Attachment #24.

<sup>35</sup> Janet Stilson, "Placements Push to Front; Wide Range of Advertisers Play More Sophisticated Product

, but plans for the show have been postponed, perhaps indefinitely, because of the inability to attract another major sponsor in addition to Pepsi-Cola.<sup>39</sup>

Top network officials agree as well. "When somebody is jumping up and down because they have a beer as a reward," said CBS President Leslie Moonves, "and they make it seem like it's the greatest liquid that they ever drank in their lives and they're real people -- that probably is more effective than having some model saying 'Hey, drink Budweiser.' It can be very effective."<sup>47</sup>

Said Lynn Fletcher, chief strategic officer of Vickers Benson & Arnold, product placement is "more subtle than advertising because your

the late '70s that “When you sell a kid on your product, if he can't get it he will throw himself on the floor, stamp his feet, and cry.”<sup>56</sup>

Plentiful evidence suggests that product placement and appearances are especially potent in their effects upon children and adolescents.<sup>57</sup> For example, a recent study in the British medical journal found that:

viewing smoking in movies strongly predicts whether or not adolescents initiate smoking, and the effect increases significantly with greater exposure. Adolescents who viewed the most smoking

If conventional advertising works on young psyches in that way, how much more potent are embedded ads that appear to be part of the show? Is it totally coincidental that the products associated with the epidemic of marketing-related diseases are the very ones that the marketing industry has been pushing through stealth ads -- junk food, soda pop, beer, alcohol, and gambling as well?

Embedded ads are yet another way that the advertising industry has contrived to wedge into the relationship between parents and their own children. By sneaking past the guard of even watchful parents, the industry is able to trigger cravings in children for things that parents would not choose and might actively oppose, such as junk food, alcohol and gambling. Parents, and not the advertising industry, should be guides to children's behavior; but parents cannot guide if they don't know what is coming. The Commission owes it to the nation's parents to insist that advertisers are honest with them. Advertisers should state openly when a show contains embedded ads, and they should label the embedded ads whenever they appear. Then, parents can make an informed decision as to whether they

episodes of Universal Television's

When a beer is poured, it's from a Coors tap.”<sup>79</sup> Gail Pennington of the asked, “What is this, an infomercial?”<sup>80</sup>

Tobacco. The 1998 Master Settlement Agreement between certain tobacco companies and state officials prohibits paid product placement of tobacco on television.<sup>81</sup> The most recent FTC Cigarette Report states that the six largest cigarette manufacturers “reported” that they have honored this agreement, and that they

did not solicit the appearance of any cigarette product in any motion picture or television show, or grant permission for the appearance of any cigarette product in any motion picture or television show.<sup>82</sup>

However, the product placement of tobacco products on television continues in the form of movies produced before 1990. Such tactics are unsurprising. An internal 1989 Philip Morris marketing plan explained “We believe that most of the strong, positive images for cigarettes and smoking are created and perpetuated by cinema and television.”

A study in last year confirmed that there is





are packed with product placements and other veiled commercial pitches. But they pretend that these are just ordinary programming rather than paid ads.

This is an affront to basic honesty. We urge the Commissi