

FCC finally prepares to investigate embedded ads on TV

By [Matthew Lasar](#) | Published: June 29, 2008 - 07:24PM CT

After stalling on the issue for years, the Federal Communications Commission has opened a proceeding on the widespread use of embedded advertising—inserting brand name products into the story line of a TV show. "I believe it is important for consumers to know when someone is trying to sell them something," FCC Chair Kevin Martin declared in his press statement on the *Notice of Inquiry and Notice of Proposed Rulemaking*.

As [Ars has reported](#), public interest groups and members of Congress have been asking the agency to take the product placement issue on for some time. Martin acknowledged the validity of concerns that embedded ads thwart the efforts of consumers to skip past commercials by digitally prerecording shows. "Due, in part, to these technological developments, networks may be turning to more subtle and sophisticated means of incorporating commercial messages into traditional programming," he said on Friday.

But this proceeding also appears to bend to the wishes of the advertising industry by leaning more towards soliciting comment and less towards proposing specific rules, although it does suggest actions that could impact children's programming relatively soon.

**Reform groups want FCC to take
on product placement epidemic**

Getting to here

The FCC's action represents at least a partial victory for media reform groups, who have asked the Commission to put limits on product placement since 2003. The group Commercial Alert filed a Petition for Rulemaking that year about embedded plugs. Commercial Alert proposed "concurrent disclosure"—TV viewers and radio listeners should see or hear an immediate message telling them that something said or shown was paid for by a commercial advertiser. Media and advertising groups quickly fought back, their most prominent non-profit advocates raising First Amendment concerns. The [Washington Legal Foundation](#) (WLF) and Freedom to Advertise (FAC) protested against any FCC action, arguing that advertainment causes no

substantial harm. FAC insisted that concurrent disclosure would be so intrusive as to represent "a government ban on product placement" and de facto censorship of commercial speech. The groups also offered a fallback proposal: the FCC should launch a *Notice of Inquiry* rather than a *Notice of Proposed Rulemaking*.

In 2005, four more groups weighed in for some kind of action against product placement. The Writers Guilds of America, West and East, the Screen Actors Guild, and an associate Dean of the USC Annenberg School of Communications suggested disclosure at the beginning and end of programs and limits on placement in children's programming. Last year representatives of these organizations kept up the pressure at FCC and [Congressional hearings](#) for movement on this issue. The Commission [announced](#) that it would launch a proceeding, and then mysteriously [deleted](#) the item from its agenda. Now, at last, a formal comment cycle has begun.

Proposals?

The Commission's *Notice* suggests that television sponsoring identification announcements be made "more obvious to the consumer" by requiring a specific size of lettering and a specific length for the disclosure. But beyond that, the proposal section of the item asks more questions than it offers solutions, although some of the questions clearly lean in a policy direction, especially in the realm of children's TV.

Existing federal legislation puts the FCC in a strong position to confront product placement in children's programming. The Children's Television Act of 1990 requires broadcasters to air a minimum of educational TV programming and empowers the FCC to set time and content limits on commercials. The agency insists on a strict separation of advertising and programming content in children's fare. "We note," the FCC suggests, "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. Should that prohibition be made explicit in our rules?"

The FCC also asks for feedback on whether a seemingly spontaneous radio talk show hosts' endorsement of some product or service should trigger a sponsorship announcement. And the agency wants to know if it should extend whatever rules it makes to cable TV.

Comments

The *Inquiry* section of the item seeks evidence of the extent of embedded advertising in radio and television. "How often are these embedded advertising practices occurring and in what form?" it asks. The Commission requests feedback on Commercial Alert's proposal for concurrent disclosure, and the extent to which it would "be more or less disruptive to radio programming."

But the document also solicits comment on WLF and FAC's concerns. Would concurrent disclosure "infringe on the artistic integrity of entertainment programming"? the agency asks (although one struggles for a definition of "artistic integrity" that includes repeatedly embedding praise of Oreo cookies in a TV episode, as did [two installments](#) of *Seventh Heaven* a few years ago). Would concurrent disclosure "be paramount to a ban on embedded advertising?" as WLF and FAC claim.

How quickly will the FCC move on this issue? Don't hold your breath waiting for action on radio

probably do something about children's TV sooner. "It is my strong initial belief that embedded advertising in children's programming is already prohibited because it would run afoul of our existing requirement that there be adequate separation between programming content and advertising," Copps declared in his press statement on the *Notice*. "I hope we can move quickly to clarify our rules in this area as necessary and to take any appropriate enforcement action."

Further reading

- The FCC's [Notice of Inquiry and Notice of Proposed Rulemaking](#)