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“Are You SELLING to Me?”

Stealth Advertising in the Entertainment Industry

As any historian of television knows well, advertising and the medium of television have been inseparable ever since Milton Berle first donned a dress. Still, for the vast majority of television's 50-year life, advertising has been segregated from the creative content of television shows. Viewers watched Gilligan, or Archie Bunker, or Bart Simpson, and then, every so often, the show stopped, and a commercial was aired. The show was distinct from the ad, and the viewers at home, young and old alike, knew when they were being sold something, and when they were not.

That is changing very fast. With the expanding practice of product integration, advertisers and producers are demanding that commercial products be insinuated into the story itself. It used to be that a writer would be asked to weave a love interest into a story. Now, that writer is being asked to weave in potato chips, or soft drinks, or building supply stores.

It has, therefore, become apparent that professional television writers (and some film writers, too) are being told to write something akin to advertising copy and to disguise it as story lines. The result is that tens of millions of viewers are sometimes being sold products without their knowledge, sold in opaque, subliminal ways, and sold in violation of governmental regulations. Professional writers are now required to be complicit in these practices, and it is for these reasons that the Writers Guild of America, west and East have published this white paper. We seek to explain just what product integration is, why it has recently become so prevalent, and what we think can and should be done about it.

We want to make a few points very clear. As writers, we feel we have a responsibility to discuss issues that affect us professionally. As citizens, we feel an equal responsibility to bring to the public's attention matters that concern us all. We believe product integration fits both categories. As writers, we believe our creative rights are affected when we are told, often late in the production process, to incorporate a commercial product into the story lines we've written. As members of a union, we are understandably concerned that so much product integration is used to fund reality programs – programs that hire non-union storytellers, and provide these writers with low wages, poor working conditions, no health care, and no pensions. As parents, family members, neighbors, and citizens, we are concerned about the growing substitution of advertising for creative stories, about stealth advertising, and about government regulations that are being ignored.

What is product integration?

We have all likely spotted commercial products in our favorite television shows or movies. This is certainly nothing new. In *E.T.*, for example, many people recognized that Elliott offered his new alien friend Reese's Pieces as an inducement to come into Elliott's house. The scene, however, was not about Reese's Pieces. The scene was about Elliott forming a bond with E.T. The producers of the movie chose to use Reese's Pieces, but they might just as well have chosen another product. If the manufacturer of Reese's Pieces paid for the candy's use in the film, this would be an example of "product placement." Using real commercial products as mere props has been a form of advertising for a long time, but it has never been a substantial or principal revenue stream for producers.

When, on the other hand, the commercial product becomes part of the story – if dialogue is written about that product (invariably, of course, extolling its virtues), or if characters have to interact with that product, overtly making reference to it – these are examples of product integration. If, for example, E.T. had picked up the Reese's Pieces, eaten them, and turned to Elliott and said, "I just love Reese's Pieces – boy, are they good -- and I would like to stay behind in your world since we don't have them on our planet, but you have to find me a big supply to convince me to stay with you." And then Elliott and E.T. embarked on a trip to find and hoard a large supply of Reese's Pieces, commenting that Reese's Pieces were well worth the hardships and obstacles along the way -- that would be an example of product integration.

In the early 1980s, when *E.T.* was written, a writer being forced to write such dialogue was a laughable proposition. Today, however, it's becoming commonplace.

Product Integration and Advertising Revenues

Why is product integration becoming a common practice these days? Because producers and advertisers recognize its enormous economic potential, and because they are willing to lower decades-old standards on what is deemed acceptable creative content in order to reap these rewards.

Last year, the use of products in filmed entertainment was up 44 percent, and generated revenues in excess of \$1 billion. In television alone, product-related revenues skyrocketed a whopping 84 percent. Much of this increase came from lucrative product integration deals.¹ For example, during the third season of *The Apprentice*, Burger King, Dove Body Wash, Sony PlayStation, Verizon Wireless, and Visa all reportedly paid upwards of \$2 million *per episode* to have their products incorporated into plot lines. For its money, Burger King got contestants who wore Burger King uniforms, tried to devise taglines for Burger King products, and flipped burgers as part of their *Apprentice* challenge.

Advertisers understand that the emotional connections viewers have with shows and their characters can be used to motivate viewers to buy their merchandise. Guild members are now the conduits – we are being told to write the lines that sell this merchandise and to deftly disguise the sale as story. As CBS Chairman Les Moonves put it, "You're going to see some

shows doing [product integration] extremely well, where you're hardly aware that you've been sold something.”²

This practice of writing so that “you’re hardly aware that you’ve been sold something” raises issues for writers, for our Guilds, and for the public at large.

Guild members and creative rights

Does the practice of product integration raise issues for writers that need to be negotiated with our employers? Is there a salient difference between a producer asking a writer to create a new character, and telling that writer to incorporate a mouthwash into the story? We think the answer is yes.

Writers are trained to write drama or humor, action or adventure, based on how people behave. Whether the person lives in the here and now, or the past, or a galaxy far, far away, our members write stories about human beings. Since long before someone carved out the Rosetta stone, societies have valued these storytellers for the emotions and insights they provide. Our members work hard to do this task. They have brought countless characters to life, from Charles Foster Kane to Ralph Kramden, from Rick Blaine to Rob Petrie, from the Terminator to Ross and Rachel, and from Austin Powers to Jerry, George, Elaine, and Kramer.

This is the job our members do. Selling body washes, lumber yards, and soda pop is a different task, one that has traditionally been performed by others – people who have been well-paid for their work. Now, however, along with being asked to create memorable stories and characters, our writers are being told to perform the function of ad copywriter, but to disguise this as storytelling. Here are just a few examples of the effort to inject commercials into entertainment:

Writers on the ABC soap opera *All My Children* worked for days on an emotional hospital scene only to be told at the last minute that the network had cut a product integration deal with Wal-Mart to plug a new perfume. With production wrapping up, the writers did the best they could by writing a scene where the emotionally distraught wife took a moment to talk about the Wal-Mart scent on the way to the bedside of her comatose husband.

An episode of *Desperate Housewives* involved Gabrielle getting a job as a spokes-model for the Buick LaCrosse, one of the show’s major advertisers. Not only is the car shown on a rotating pedestal, but Gabrielle enumerates its many virtues.³

The WB routinely offers advertisers the opportunity to insert their brands into scripts. Procter & Gamble signed a pact with the network to get its products mentioned during episodes of *What I Like About You*. As a result, characters Holly and Tina competed to be the Herbal Essences girl, and Val emoted over a Swiffer.⁴

Daytime soaps have integrated products ranging from Butterball Turkeys to Kleenex to hair removal products.⁵ The NBC soap *Passions* has included JC Penney, Frosted Flakes, and EPT Home Pregnancy Tests as part of storylines.

Writers also are being asked to introduce products into storylines with the intent of developing and selling new merchandise. Disney Consumer Products worked with Wal-Mart to launch a fragrance called Enchantment – the perfume was named after the cosmetics firm founded by Erica Kane (played by Susan Lucci) on *All My Children*. The perfume appeared in storylines and is sold in Wal-Mart stores.⁶

Not surprisingly, Guild members have demonstrated they are generally uncomfortable with the practice of writing ads disguised as story. A scientific phone poll conducted in March 2005 showed that 73 percent of WGAw members think the line between advertising and content needs to be more firmly drawn. Some think product integration destroys the viewers emotional connection with the story. Some want to ban the practice altogether. Some think they should receive additional compensation for directly selling products. Others merely ask that they be given sufficient time to weave products into storylines in as elegant a way as possible.

Product integration, then, clearly concerns writers, and must be the subject of negotiations between the producers and us. Negotiations would involve the appropriate compensation for the additional work involved, some of which may exceed the number of revisions provided for in the collective bargaining agreement in addition to those provisions regarding merchandising rights and payment. Negotiations would also involve those provisions in the union contract regarding warranty and indemnification when material is provided to the writer for inclusion in the script, as well as how and if third parties prescribing content modifies the bargaining unit.

Product integration and reality television

Product integration is especially prevalent in reality television. These shows are produced with non-union labor, a fact that the Guilds are working strenuously to change.

Why has reality television proved such fertile ground for the evolution of product integration? In *Madison and Vine*, *Advertising Age* editor Scott Donaton says in the convergence of the entertainment and advertising industries, reality shows were a perfect testing ground for embedded advertising:

The concept of content-commerce alliances coincided happily with the rise of reality TV (think *Joe Millionaire* or *The Bachelorette*), a genre that seemed ready-made for such tie-ins and can be credited with providing an instant, high-profile platform for such deals. Product integration could never have risen to such prominence so rapidly if TV schedules were still dominated by sitcoms and hour-long dramas...rather than by brash reality shows with short lives and an anything goes sensibility. They make a

perfect Petri dish for advertisers who are keen on experimenting with this new format.⁷

Indeed, reality shows have been the new frontier where long-held content standards and practices no longer seem to apply. This season alone, Honda Motor Company was plugged on *Rock Star: INXS*, Bally Total Fitness was featured in *The Apprentice* and Sears Holding Company and its products were integrated into *Extreme Makeover: Home Edition*.⁸ The story beats based on brands are often more grounded in surrealism than reality. On a recent episode of *The Biggest Loser*, overweight contestants were “challenged” to break open padlocked JELLO branded refrigerators and quickly move gelatin molds across the room. A small sampling of additional examples include:

Scott Miller, a story producer on *American Dream Derby* told us, “We had 15 minutes before crew was going on overtime and the director, he literally said, ‘go get my fucking Diet Dr. Pepper moment and get out of here.’ Contestants were talking about the competition, and we were trying to get storytelling elements and how they’ve got to beat this person tomorrow, and on top of that I had to do the integration, and I was literally handing people cans of Dr. Pepper under the camera. We had contestants saying on mike – ‘I hate Dr. Pepper’ and ‘I liked it at first, but now I hate it.’ I told them to just hold it in their hand. But then we were told we had to make sure they drank it too.”

Mykle Parker, story producer on *Outback Jack* told us, “We were in the middle of the outback at a natural hot springs with eight girls in bikinis, and the producer takes out a basket of Skintimate shave gel and hand cloths and tells them to start shaving. When the executive producer saw the footage, he was upset because he said it looked like a commercial. Well, it looked like a commercial because they set it up that way.”

An editor who worked on *The Restaurant* told us about the demand to meet advertiser requests for multiple product mentions: “Because of pressure to show a product X amount of times over the course of a season, you have to find a place to put it in an episode even sometimes in places where it doesn’t fit. Sometimes you have to cram it in, and it creates a problem for the show if Master Card or the Diner’s Card is supposed to be shown 12 times, and you’ve only shown it ten – you have to find two more, whether or not it’s appropriate.”

A story producer on *America’s Next Top Model* said, “[The show] sometimes requires that its contestants record voice-overs later to please its sponsors. On an episode of *Top Model*, the girls were going to do a runway fashion show. Kmart became a sponsor, so the producers decided that the runway challenge would take place at Kmart. Obviously, when you think of a high fashion runway show the last place you think of is Kmart, and the girls’ (sound) bites in the original cut reflected that sentiment. For that episode, the contestants had to come back in and read lines that had been written for them about Kmart. The producer said that Kmart only allowed a comment like, ‘What are we doing at Kmart?’ if it was followed up by ‘That’s OK, I shop here all the time.’ A voice-over also was added from Jay Alexander about all the

wonderful accessories that you can find at Kmart, a shameless plug and a justification for the location.”

The producers and advertisers who have turned much of reality television into quasi-infomercials have reaped enormous profits. Yet, they have so far refused to give their storytellers basic health care, or pensions, or working days that don’t last 20 hours, or residuals, or any of the fundamental protections enjoyed by Guild writers.

We have long believed, and still do believe, that producers are, in a very real sense, our business partners; the well-being of each depends on the other. We truly respect this relationship. In reality television, however, this relationship has been eviscerated by greed.

We ask that reality writers get what Guild writers get – no more, no less – and we intend to pressure advertisers who support reality programming until reality writers become full-fledged union members. Once these writers are a part of our Guilds, they will be able to join us when we negotiate with producers the long-term creative and financial issues posed by product integration.

Product integration, the public, and the FCC

As mentioned, our writers are now being told to integrate sales pitches into story lines. That Guild members are now being forced to take part in stealth and often subliminal advertising concerns us a great deal.

This issue concerns media watchdog groups as well. “The whole television industry has moved to stealth advertising. It’s dishonest advertising that sneaks by our critical faculties and plants messages in our brains when we are paying less attention,” said Gary Ruskin, executive director of Commercial Alert.⁹ Indeed, no less an authority than FCC Commissioner Jonathan Adelstein has echoed this complaint: “Everything from Coke to soap is subliminally hawked in TV programs,” Adelstein said. “In today’s media environment, product placement has moved beyond Coke tumblers prominently displayed at the judges’ table of *American Idol*. Now products have even seeped into plotlines.”¹⁰

Children’s greater vulnerability to hidden tactics of persuasion has not escaped regulators. FCC Commissioner Adelstein noted, “Children’s programming is a particular concern because kids can’t distinguish between advertising and regular program content. It’s particularly manipulative when you’re dealing with children to try and insert product placements into the programs themselves.”¹¹

Interestingly, last spring, in what may at first seem like an unrelated event, New York State Attorney General Eliot Spitzer launched a sweeping investigation of illegal radio promotion activities by major music labels. Soon after, Kevin Martin, chairman of the Federal Communications Commission, ordered the agency’s enforcement bureau to open its own investigation. “The FCC has longstanding rules prohibiting payola,” Martin said. He went on to add, “These rules serve the important purpose of ensuring that the listening public

knows when someone is seeking to influence them. Broadcasters must comply with these rules. The commission will not tolerate noncompliance.”¹²

Congress first required broadcasters to identify their sponsors in the Radio Act of 1927. The reason: “Listeners are entitled to know by whom they are being persuaded.”¹³ Today, federal law requires disclosure of sponsored broadcast materials. The statute (Section 317 of the Communications Act) states:

All matter of broadcast by any radio station for which money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by the station so broadcasting, from any person, shall, at the time the same is so broadcast be announced as paid for or furnished, as the case may be, by such person...”¹⁴

The FCC has extended payola rules to broadcast television. For example, the FCC has brought many deceptive advertising cases against producers of infomercials, charging that these productions were deceptive in that they “purported to be independent programming rather than paid ads.”¹⁵

Moreover, these days, considerations provided by advertisers are usually disclosed, if at all, at the end of the show – usually in very small print that scrolls by quickly – making it all but impossible to link the advertiser to the product mentioned or shown during the program. Indeed, the consumer advocacy group Commercial Alert has asked for the disclosure of product integration deals at the beginning of a program and the superimposition of notice onto the screen as the product placement occurs.¹⁶

As mentioned, FCC Commissioner Jonathan Adelstein already has these issues on his radar. Saying he is alarmed by the growth of “covert commercial pitches,” he has called on the FCC to investigate hidden advertising. His comments mark the strongest words yet from an FCC Commissioner about the lack of disclosure of stealth advertising.¹⁷

Additionally, this past summer the FCC requested the public contact the agency if they spot any potential violations of its rules banning broadcast payola. Agency officials created a web page that reminds broadcast licensees that failure to disclose payments violates FCC rules, and that anyone involved in the production of paid promotions (including production companies and advertisers) also has a legal responsibility to fully disclose paid mentions in programming.

The Guilds do not want members put in the unacceptable position of facilitating violations of FCC regulations. We, therefore, think this issue ultimately requires discussion both at the bargaining table and before the FCC in Washington.

Where do we go from here?

One need not possess a business degree to know that, when one partner in a business relationship unilaterally changes how business is done, a discussion among the partners is

required. It would be foolish to expect otherwise. Experienced business people know that partners acting intelligently and in good faith use discussion to manage changed circumstances and maximize the value of their efforts; acting unilaterally, they risk a far less efficient result.

We would naturally prefer to talk, knowing that to be the wisest course of action among partners. Still, the producers appear adamantly opposed to anything resembling a discussion; they have made clear they wish to order the world as they alone see fit, and do not need to exhibit the decency to address the legitimate concerns of those people who help them earn their profits.

Therefore, we take this opportunity to call for the establishment of a **Code of Conduct** to govern the use of product integration, including the following elements:

1. Full and clear disclosure – we call for both the visual and aural disclosure of product integration deals at the beginning of each program, so the program's audience knows ahead of time that it will be subject to hidden or stealth advertising.
2. Strict limits on the usage of product integration in children's programming.
3. A voice for storytellers, actors, and directors arrived at through collective bargaining about how a product or brand is to be integrated into content.
4. Extension of all regulation of product integration to cable television, where some of the most egregious abuse is found.

This Code of Conduct can be established through negotiations with our business partners. Failing that, we will seek additional FCC regulation. As product integration proceeds unabated, we call on the FCC to formally investigate the practice of product integration and fix rules, such as visual and aural disclosure, designed to make clear what practices are and are not acceptable. It is an investigation we will assist as best we can.

The Guilds are currently preparing a complaint that will document the ongoing violation of FCC regulations in this area. We call on all interested parties, as well as the public, to join us in this necessary dialogue about the limits of commercialization of our culture.

¹ E. Stuart, "Burger King takes a product from TV to table," *New York Times*, 1-21-05.

² S. Donaton, Madison and Vine: Why the Entertainment and Advertising Industries Must Converge to Survive, (New York: McGraw-Hill, 2004), p. 154

³ G. Lianne, "Is Keifer Sutherland Trying To Sell You Something?," *Maclean's Magazine*, 2-21-05.

⁴ *Ibid.*

⁵ B. Barnes, "A Good Soap Opera Script Includes Love, Tears and Frosted Flakes," *Wall Street Journal*, 1-17-05.

⁶ P. Albinia, "The Place to Place a Product; Storylines include everything from perfume to potato chips," *Broadcasting and Cable*, 2-14-05.

⁷ S. Donaton, Madison and Vine: Why the Entertainment and Advertising Industries Must Converge to Survive, (New York: McGraw-Hill, 2004), p. 64

⁸ S. Vranica, "Sponsors in Spotlight Fuel Backlash: Writers Say Weaving Plugs Into TV Scripts Is Poor Mix Of Commerce and Creativity," *Wall Street Journal*, 9-27-05.

⁹ M. James, "Probe of Stealth Ads Sought: An FCC official urges his agency to crack down on lax disclosure of fees for product placement," *Los Angeles Times*, 5/26/05.

¹⁰ *Ibid.*

¹¹ "Questions For...Jonathon Adelstein," Amy Schatz, *The Wall Street Journal*. June 8, 2005

¹² B. Boliek, untitled report, *The Hollywood Reporter*, 8-9-05.

¹³ *Applicability of Sponsorship Identification Rules*, 40 FCC 141 (1963) as modified, 40 Fed. Reg 41936 (September 9, 1975).

¹⁴ 47 U.S.C. 317 9(a)(1).

¹⁵ “The Commissions has brought many deceptive advertising cases against producers of infomercials, charging that these productions were deceptive in that they ‘purported to be independent programming rather than paid ads.’ For example, the consent decree in Michael S. Levey forbids Mr. Levey, a marketer of diet patches, from disseminating and “Advertisement that misrepresents, directly or by implication, that is it not a paid advertisement.” Complaint filed by Gary Ruskin, RE: Request for Investigation of Product Placement on Television and for Guidelines to require Adequate Disclosure of TV Product Placement, p. 2-3, submitted to the Federal Trade Commission, 9-30-03.

¹⁶ Complaint filed by Gary Ruskin, RE: Request for Investigation, and Petition for Rulemaking to Establish Adequate Disclosure of TV Product Placement, submitted to the Federal Trade Commission, 9-30-03.

¹⁷ M. James, “Probe of Stealth TV Ads Sought,” *Los Angeles Times*, 5-26-05.