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To: All Broadcast Clients

February 12, 2008

**FTC CHARGES THREE DIETARY SUPPLEMENT
MARKETERS WITH DECEPTIVE ADVERTISING; COURT ORDERS
CERTAIN GUIDELINES FOR DEFENDANTS' INFOMERCIALS**

Broadcasters should be aware of a recent Federal Trade Commission ("FTC") enforcement action regarding paid advertisements for dietary supplements. The FTC concluded that three dietary supplement marketers violated a court order entered against them two years ago by failing to include clear, audible and properly placed disclosures in a number of television and radio infomercials that would have made it clear that the programs were paid advertisements, and the court ordered that the defendants' future infomercials follow specific disclosure guidelines.

The original FTC order against Great American Products, Inc., Physician's Choice and Stephen Karian charged that the defendants deceptively marketed their dietary supplements and other products. Despite the order's specific requirements on how to disclose that the programs were paid advertisements, the FTC charged the companies a second time for airing a number of television and radio infomercials without the mandated disclosures.

According to the FTC, the defendants failed to run required "Paid Advertisement" disclosures immediately before product-ordering instructions. In addition, the FTC found that at times the disclosures were too small or were visible onscreen too briefly to be read by consumers.

The court ordered the defendants to abide by the following guidelines when airing their paid advertisements:

For television advertisements, the defendants must:

(1) display a visual "Paid Advertisement" disclosure continuously during the ordering instructions; and

(2) broadcast a supplemental audio "Paid Advertisement" disclosure simultaneously with the initial visual disclosure (in the first 30 seconds of the advertisement, for a period of at least 10 seconds), clearly and audibly, in a cadence sufficient for the ordinary consumer to hear and comprehend, and in a volume as loud or louder than the loudest statement in the advertisement.

For defendants' radio advertisements, the audio "Paid Advertisement" disclosure must be as loud or louder than the loudest statement in the advertisement and must air immediately prior to the ordering instructions.

If you have any questions regarding proper advertising disclosures or running infomercials, please contact our office.

Leventhal Senter & Lerman PLLC

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.