



October 18, 2005

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW, Room 135
Washington, DC 20580

RE: Request for Investigation of Companies That Engage in “Buzz Marketing”

Dear Mr. Clark:

This is a request for an investigation of companies that conduct so-called “buzz marketing,” which is a technique by which corporations seek to influence buying decisions, often by stealth. There is evidence that some of these companies are perpetrating large-scale deception upon consumers by deploying buzz marketers who fail to disclose that they have been enlisted to promote products.

This failure to disclose is fundamentally fraudulent and misleading; and it might violate federal prohibitions against unfair or deceptive acts and practices affecting commerce.¹ An investigation by the Federal Trade Commission could lead to actions against individual buzz marketers, and/or to new guidelines requiring disclosure by any and all persons who are paid to engage in buzz marketing operations.

Buzz marketing also is known as “guerrilla,” or “stealth” marketing. The terms are significant because they suggest the subterfuge that corporations are working on the buying public. They often are not promoting products and services openly, the way conventional advertising does. Rather they are enlisting people to promote products under the guise of doing something else. In a description of buzz marketing terminology, *PR Week* includes: “Stealth Undercover tactics, such as actors using products in public places.” Such tactics “Directly targets consumers and does not openly appear as a marketing drive.”²

Fraud is fraud, and a harmless-sounding name such as “buzz marketing” doesn’t change that.

The Federal Trade Commission should require any and all persons who are paid to engage in such practices to disclose their relationship to the corporation whose products they are pitching, including their compensation. Failure to provide such disclosure should be considered “unfair or deceptive acts and practices in or affecting commerce” within the meaning of the Federal Trade Commission Act.

¹ 15 U.S.C. § 45(a)(1).

² “Buzz Passes Marketing Milestone.” *PR Week*, June 11, 2004.

A: Are Some Buzz Marketers Deceiving the Public?

Some buzz marketers claim they are instructing their paid endorsers to disclose that they are paid, and therefore their marketing is not deceptive. For example, in a letter to *Advertising Age*, Word of Mouth Marketing Association CEO Andy Semovitz wrote that “The Word of Mouth Marketing Association (WOMMA) was founded to promote the open, honest use of word of mouth marketing. From our creation, our goal has been to bring honesty to marketing. We oppose deception in any and all forms. We are the good guys in the marketing world.” Semovitz adds: “Word of mouth is not about paying people to pretend they like something. Has that practice, known in the business as stealth marketing, happened in the past? Yes. Should it be done in the future? WOMMA emphatically says no.”³

Mr. Semovitz himself admits that some buzz marketers do not disclose that they are paid endorsers. But buzz marketers have been open and even boastful within the confines of the marketing industry. Here’s how *Chief Executive* magazine described the modus operandi of this new form of hidden persuasion.

It used to be that lying was something a leader would be ashamed of. Now more and more CEOs of consumer-oriented companies -- led by the nose by the 29 year-olds running their marketing departments -- are encouraging their employees and contractors to lie.

The CEOs and marketing departments don't call it lying, of course. They call it buzz marketing, and it works like this: Find people who look like your customers. Better yet, find people so attractive or hip or strange or friendly that your customers wish they looked like them. Pay these attractive, strange, friendly hipsters to wear, drink, eat, ride, or otherwise use your products. Most important of all, tell the hipsters in your employ not to reveal, at least for a while, that they work for you.⁴

Some buzz marketers believe that their industry is inherently covert and dependent on deceiving unsuspecting consumers. “I can't begin to image how one can regulate an industry that thrives on its covert nature,’ says Margaret Kessler, project coordinator at TMR Multimedia, a small marketing firm in Hollywood, Fla. Ms. Kessler routinely hires ‘ad spies’ to talk up local products. Recently, she hired several actors to stand in the long line at the local courthouse and strike up conversations about a sale going on at a nearby furniture store. Last year, a major snack-food company hired TMR to conduct a pilot project for a healthy snack, which included having ad spies hang around clinics while munching on the new product.... ‘The whole idea of marketing is to not make it look like marketing,’ says Jon Bond, co-founder of Kirshenbaum Bond & Partners.”⁵

In 2002, the *Wall Street Journal* reported on a buzz marketing campaign by Sony Ericsson that employed paid actors to do product promotions.

³ Andy Semovitz, “‘Is Buzz Marketing Illegal’ Story Rebutted; Letter to the Editor From Word of Mouth Marketing Association.” *AdAge.com*, October 10, 2005.

⁴ John Brandt, “Beware of Bad Buzz.” *Chief Executive*, November 1, 2001.

⁵ Suzanne Vranica, “Getting Buzz Marketers to Fess Up.” *Wall Street Journal*, February 9, 2005.

In a campaign set to start tomorrow, the U.S. arm of Sony Ericsson Mobile Communications Ltd. will take “guerrilla” marketing to a new level. Its goal: to get consumers to pay attention to the new T68i, a mobile phone that can double as a digital camera.

In one initiative, dubbed Fake Tourist, 60 trained actors and actresses will haunt tourist attractions such as the Empire State Building in New York and the Space Needle in Seattle. Working in teams of two or three and behaving like tourists, the actors and actresses will ask unsuspecting passersby to take their pictures.

Presto: instant product demonstrations.

A second stunt will involve the use of “leaners” -- 60 actresses and female models with extensive training in the phone's features who will frequent trendy lounges and bars without telling the establishments what they're up to. The women are getting scripted scenarios designed to help them engage strangers in conversation. One involves having an actress's phone ring while she's in the bar -- and having the caller's picture pop up on the screen. In another scenario, two women sit at opposite ends of the bar playing an interactive version of the Battleship game on their phones.

So far, so good. But do the actors then identify themselves as working on behalf of Sony Ericsson? Not if they can help it. The idea is to have onlookers think they've stumbled onto a hot new product. Sony Ericsson, which plans to spend \$5 million on the 60-day marketing campaign, says it's all in good fun and just an effort to get people talking.⁶

In 2004, *The New York Times* reported on the activities of a company called BzzAgent:

[W]hile BzzAgent tells its volunteers that they are under no obligation to hide their association with the company and its campaigns, the reality is that most of them do hide it most of the time. They don't tell the people they are “buzzing,”.... “It just seems more natural, when I talk about something, if people don't think I'm trying to push a product,” Karen Bollaert explained to me.⁷

Concerns about deception are heightened when minors are the target audience of buzz marketing. According to news accounts, Procter & Gamble has assembled a sales force of 250,000 teens for buzz marketing purposes.⁸ According to *Forbes*, the teens are compensated with things such as “six \$10-off coupons,” “a \$2 minidisc,” “product samples,” and other items.⁹

⁶ Suzanne Vranica, “That Guy Showing Off His Hot New Phone May Be a Shill; New Campaign for Sony Ericsson Puts Actors in Real-Life Settings; Women Play Battleship at the Bar.” *Wall Street Journal*, July 31, 2002.

⁷ Rob Walker, “The Hidden (In Plain Sight) Persuaders.” *New York Times*, December 5, 2004.

⁸ See, for example, Jack Neff, “P&G Broadens Its Interactive Effort; Rolls Out Sweepstakes for Prilosec, Will Launch Buzz Program for Moms.” *Advertising Age*, September 26, 2005.

⁹ Melanie Wells, “Kid Nabbing.” *Forbes*, February 2, 2004.

What does Procter & Gamble's Tremor say to its legion of teenage product endorsers? Does it require them to disclose that they are paid, or not? Bob Aluja, professor of marketing at Xavier University in Cincinnati, told the *Christian Science Monitor* that Tremor doesn't tell its teenage endorsers to disclose that they are being compensated by Tremor and its clients.

[Tremor's] notice intended for parents is also incomplete, asserts Dr. Aluja. "They leave out that they're gathering research information from your child, they leave out that your child will be ... asked to participate in focus groups [for which product manufacturers] will give the child \$75 to \$150 a month. And they leave out that while they don't tell your child not to tell, they also don't say to the child 'When you go to your friends, let them know that you're working for Tremor.'"¹⁰

Some parents are critical of Tremor for failing to disclose to parents the true nature of its activities. *Forbes* reported that "Fifteen-year-old Andrew Schrijver recently got the come-on from Valvoline -- even though he doesn't have a learner's permit. His dad, Robert, is upset that Tremor portrays itself as a forum for opinion sharing when it's really trying to hawk products: 'If they're going to try to sell things to kids, they need to make it explicit that this is a selling channel.'"¹¹

B: Some Buzz Marketing Appears to Violate Prohibitions Against Deceptive Acts or Practices

The Commission has stated that an act or practice is deceptive under Section 5 of the FTC Act if (1) there is a "representation or omission or practice that is likely to mislead the consumer" who is "acting reasonably under the circumstances,"¹² and (2) that the representation or omission is "material" – defined as an act or practice "likely to affect the consumer's conduct or decision with regard to a product or service."¹³

In a footnote to the FTC Deception Policy Statement, the Commission defined deceptive and misleading omissions:

A misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed....In determining whether an omission is deceptive, the Commission will examine the overall impression created by a practice, claim, or representation....Omissions may also be deceptive where the representations made are not literally misleading, if those representations create a reasonable expectation or belief among consumers which is misleading, absent the omitted disclosure.¹⁴

¹⁰ Clayton Collins, "Marketers Tap Chatty Young Teens, And Hit a Hot Button." *Christian Science Monitor*, March 30, 2005.

¹¹ Melanie Wells, "Kid Nabbing." *Forbes*, February 2, 2004.

¹² FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.* 103 F.T.C. 110, 175 (1984).

¹³ FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.* 103 F.T.C. 110, 175 (1984).

¹⁴ FTC Deception Policy Statement, appended to *Cliffdale Associates, Inc.* 103 F.T.C. 110, 175 (1984).

If buzz marketers fail to disclose (1) that they are paid marketers and (2) by whom they are being paid, the Commission should consider this a material omission of information likely to mislead the reasonable consumer, and likely to affect a consumer's decision to buy a product. The reason is, as the Commission has stated, that "consumers may give more credence to objective representations about a product's performance or other attributes if made by an independent third party than if made by the advertiser itself."¹⁵ For this reason, the Commission has repeatedly required advertisers to disclose that their ads are ads in a number of contexts, including infomercials,¹⁶ misleading formats in magazines and newspapers,¹⁷ and search engines.¹⁸

And by all accounts, word-of-mouth is a potent advertising tool. Procter & Gamble attests to the power of buzz marketing. "Word-of-mouth advocacy is the gold standard in marketing," says Jim Stengel, Procter & Gamble's global marketing officer.¹⁹ *WWD* magazine explained that "Through its millions spent on consumer research, Procter & Gamble has come to the conclusion that the most effective form of marketing is an endorsement from a friend."²⁰

Even some lawyers for the advertising industry admit that buzz marketers by law should disclose that they are paid. "If the motivation for [an endorser] is to profit from his or her endorsement," Douglas Wood, chairman of advertising and marketing law at Reed Smith told *Advertising Age*, "that connection probably needs to be disclosed."²¹

¹⁵ Correspondence from Mary K. Engle, Associate Director for Advertising Practices, Federal Trade Commission to Commercial Alert, February 10, 2005.

¹⁶ Michael S. Levey, Docket No. C-3459, Federal Trade Commission, 116 F.T.C. 885, September 23, 1993. See e.g. Nutrivida, Inc., and Frank Huerta, Docket No. C-3826, Federal Trade Commission, September 10, 1998. Bogdana Corp. and Joseph L. Gruber and Bogda Gruber, Docket No. C-3820, Federal Trade Commission, July 28, 1998. Mega Systems International Inc., Docket No. C-3811, Federal Trade Commission, June 8, 1998. National Dietary Research Inc., The William H. Morris Co., and William H. Morris, Docket No. 9263, Federal Trade Commission, 1995 FTC LEXIS 324, November 7, 1995. Olsen Laboratories Inc. et. al., Docket No. C-3556, Federal Trade Commission, 119 F.T.C. 161, February 6, 1995. Wyatt Marketing Corp. Inc., and James R. Wyatt, Docket No. C-3511, Federal Trade 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 Commission, 116 F.T.C. 549, June 24, 1993. C C Pollen Co. and Bruce R. Brown, Docket No. C-3419, Federal Trade Commission, 116 F.T.C. 206, March 16, 1993. Richard Crew, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 475, October 16, 1990. Robert Francis, File No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 496, September 27, 1990. Twin Star Productions Inc, Jerald H. Steer, Allan Singer, Judith Singer, Douglas Gravink, Peter Claypatch and Steven Singer, Docket No. 882 3199, Federal Trade Commission, 1990 FTC LEXIS 87, March 13, 1990.

¹⁷ Georgetown Publishing House Limited Partnership, 122 F.T.C. 392 (1996) (consent order).

¹⁸ Federal Trade Commission, correspondence with search engine companies, June 27, 2002, <<http://www.ftc.gov/os/closings/staff/commercialalertattatch.htm>>.

¹⁹ Cliff Peale, "P&G Targets Teenage Buyers." *Cincinnati Enquirer*, October 27, 2002.

²⁰ Laura Klepacki, "P&G Locates Consumers With Tremor." *WWD*, October 6, 2003.

²¹ Matthew Creamer, "Is Buzz Marketing Illegal? Lawyers Warn of Advertising Law Disclosure Requirements." *Advertising Age*, October 3, 2005.

C: Conclusion

Buzz marketing is growing rapidly in the United States. According to *Advertising Age*, "No firm data exist on how much spending on word-of-mouth marketing programs has increased, but some estimates put it at \$40 million to \$60 million business that grew at a rate of 100% in the last year."²²

Given this rapid growth, and the appearance that some buzz marketing firms are deceiving consumers by failing to disclose that they are paid endorsers, the Commission should investigate to determine whether buzz marketers are engaging in deceptive practices in violation of the FTC Act, and issue guidelines so that buzz marketers may clearly understand what the law is.

In its investigation, the Commission should carefully examine the targeting of minors by buzz marketing, because children and teenagers tend to be more impressionable and easy to deceive. The Commission should do this, at a minimum, by issuing subpoenas to executives at Procter & Gamble's Tremor and other buzz marketers that target children and teenagers, to determine whether their endorsers are disclosing that they are paid marketers.

Sincerely,



Gary Ruskin
Executive Director

²² Matthew Creamer, "Is Buzz Marketing Illegal? Lawyers Warn of Advertising Law Disclosure Requirements." *Advertising Age*, October 3, 2005.