



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Advertising Practices

Mary K. Engle
Associate Director

July 9, 2007

Hugh Latimer, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Re: Premiere Radio Networks, Inc.
FTC Matter No. 062-3168

Dear Mr. Latimer:

As you know, the staff of the Federal Trade Commission conducted an investigation of Premiere Radio Networks, Inc. ("Premiere") for possible violations of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52. The investigation concerned Premiere's provision of advertisement production services in connection with the marketing of the HeightMax product that was the subject of a recent FTC law enforcement action. *See FTC v. Sunny Health Nutrition Tech. & Prods, Inc.*, CIV No. 8:06-CV-2193-T-24EAJ (M.D. Fla.) (Stipulated Final Order issued Nov. 30, 2006) (available online at <http://www.ftc.gov/os/caselist/0623007/index.shtm>).

Traditionally, advertising production has been a service performed by advertising agencies. An advertising agency may be held liable under the FTC Act if the agency was an active participant in preparing the deceptive advertisement and it knew or should have known that the advertisement was false or lacked substantiation. *Am. Home Prod. Corp.*, 98 F.T.C. 136, 396 (1981). Creation of the challenged advertising theme is not necessary to a finding of active participation in advertising preparation. *See Bristol-Myers Co.*, 102 F.T.C. 21, 368 (1983). An ad agency has "a duty to ascertain the existence of substantiation for the claims which it makes." *Id.* at 366.

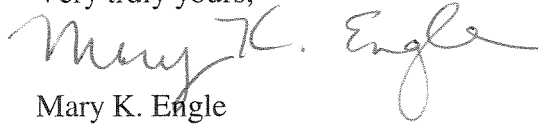
Premiere is a hybrid entity. In addition to radio program production, it produces commercial advertising for nationwide dissemination. When it engages in the latter services, the Commission precedent cited above is applicable. With this clarification, the staff believes that it is appropriate to close this matter.

This action is not to be construed as a determination that a violation has not occurred, just as the pendency of an investigation should not be construed as a determination that a violation

Hugh Latimer, Esq.
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has occurred. The Commission reserves the right to take further action as the public interest may require.

Very truly yours,

A handwritten signature in cursive script that reads "Mary K. Engle". The signature is written in black ink and is positioned to the right of the typed name.

Mary K. Engle
Associate Director
Division of Advertising Practices