

# RESPONSE BY THE ADVERTISING ASSOCIATION TO THE DCMS CONSULTATION ON PRODUCT PLACEMENT ON TELEVISION

11 January 2010

## 1. About the Advertising Association

We are the industry body representing all sides of the advertising and promotion industry in the UK – advertisers, agencies and the media. The advertising industry is worth £18.6 billion in 2008, and is the largest of the UK's creative service industries, which form some 7% of the economy. Further information about the Advertising Association, its membership and remit, can be found at the following location: <http://www.adassoc.org.uk/>

## 2. Summary of our Position

- There are different points of view in the industry. However, all agree that, if product placement is allowed, there is a need for a clear framework of rules.
- In a difficult economic climate, the Advertising Association supports any de-regulatory measures that could open up new revenue streams for broadcasters that could help bolster investment in original UK programme production.
- Prop placement remains a valuable and cost-effective way for programme producers to source authentic “props”. The BBC will continue to provide opportunities for prop placement, but, if product placement is to be permitted, it is important to allow for it to continue on commercial television as well.
- Before allowing product placement, the Government should look to other markets to ensure that prop and product placement can viably exist together in the UK market. Both have co-existed for many years in the US, though the markets and consumer expectations are very different.
- As regards the rules and safeguards that should apply, we believe they should be discussed in the context of revisions to Ofcom's Broadcast Code, rather than in the context of a Government consultation about changes to the law.
- The law should go no further than replicating the wording of the Directive which already provides sufficient minimum standards of protection. Whether or not there should be further safeguards is a matter for Ofcom to consult upon and decide. This route will avoid ‘gold-plating’ the Directive.
- Whilst there is a need for consistency, so that product placement does not become a tool for circumventing the advertising rules, we do not support just extending the latter to product placement. Product placement needs to be regulated within the

context of editorial issues, and rules made for “fenced off” advertisements are not always applicable in this context.

- We are also concerned about the principle of a regulatory body other than the ASA adjudicating on the Advertising Codes which are part of the ASA system and designed for the ASA alone to adjudicate upon.
- Product placement is a commercial transaction but, unlike advertising, it takes place within an editorial context. It should be for Ofcom to decide, within the context of the Broadcast Code, how to balance consumer protection safeguards with editorial issues. In any event, both broadcasters and advertisers will be cautious about how products will be shown and referred to in editorial, because the brand reputation of the channel and of the product is at stake.
- The existence of product placement in a programme should be signalled to viewers in accordance with the Directive requirements, but in line with minimum generic industry-wide standards. There should be transparency and notification to the viewer, but not gold-plating. A complex system of detailed notification of product placement by every advertiser would be wrong and would pose a danger of providing products with undue prominence.

### **3. Response to Questions (Section 6)**

#### **1. What, if any, viewer and other safeguards should there be in addition to those required by the AVMS Directive?**

Whilst there should be consistency with the advertising rules, any changes in law should just implement the AVMS rules, leaving the safeguards to be developed by Ofcom. Brands and broadcasters will, in any case, be likely to err on the side of cautiousness, because their brand reputation is at stake.

#### **2. How should those additional safeguards be imposed – by law, or by means of the Ofcom Code?**

Ofcom should decide on the level of detail and put safeguards in the Broadcast Code.

### **3-6 Commercial advantages**

The Advertising Association is not in a position to comment on estimates of the level of financial benefit to be obtained from allowing product placement.

### **7-14 Programme genres**

#### **7. If product placement is allowed in programmes made by or for UK television, should any of the programme genres permitted by AVMS be excluded?**

No, none of the programme genres permitted by AVMS should be excluded.

**8. Should UK controls on product placement be more specific as to what is meant by ‘films and series’ in which product placement can appear?**

No, UK law should not be more specific than the Directive. We agree with DCMS that defining in law what is meant by “films and series” would be constraining and could quickly become out of date.

**9. Are there definable types of ‘films and series’ in which product placement either should or should not be permitted?**

DCMS raises valid issues, but Ofcom should do the detail and the UK law should not be more prescriptive than the Directive in terms of defining particular genres.

**10. Should UK controls on product placement be more specific as to what is meant by ‘sports programmes’ in which product placement can appear?**

**11. Is there any reason to restrict product placement in particular types of sports programming?**

**12. Should UK controls on product placement be more specific as to what is meant by ‘light entertainment’ programmes in which product placement can appear?**

**13. Is there any reason to restrict product placement in particular types of ‘light entertainment’ programme?**

**14. Should there be a specific prohibition of product placement in religious programmes, news, current affairs and consumer programmes?**

See answer to question 9 above.

**15-19 Children**

**15. Should any or all product placement be restricted or prohibited in programmes with a disproportionately high child audience?**

It may be appropriate to restrict some types of products, but the law should not go beyond the requirements of the Directive. Any further detail should be addressed by Ofcom.

**16. If so, how should that assessment be made in advance of a programme being broadcast?**

Broadcasters and programme makers have extensive experience of applying predictive tools. Ofcom should set out the requirements within its Code, rather than the DCMS set it out in law.

**17. How could a ‘disproportionately high child audience’ be defined?**

The 120 index is a predictive tool that has long been used by broadcasters to predict a disproportionately high child audience and to place limitations on the placement of some advertised products during such programmes. But this level of detail should be defined

by Ofcom, which is long accustomed to ensuring that broadcasters implement it properly, and should not be defined in law.

- 18. Should there be restrictions on placing certain types of products (eg HFSS foods or alcohol) in programmes with a disproportionately high child audience? And if so**
- 19. Should those restrictions be the same as, or greater than, those which are currently in place for the scheduling of spot advertising of those products?**

As set out in the introduction above, there is a need for consistency, but the Advertising Codes should not be directly applicable to product placement, where the editorial context needs to be taken into account. Therefore, any restrictions should be considered within the context of Ofcom's Broadcast Code.

#### **20-22 Editorial independence; undue prominence**

- 20. How could 'undue prominence' be avoided, given the commercial imperative for audiences to recognise the products and services that have been placed?**
- 21. At what point should the Government, or Ofcom, draw the line between legitimate paid placement of goods or services and illegitimate 'direct encouragement' to purchase or hire them?**
- 22. Are rules – in addition to those that prevent 'undue prominence' and the promotion of placed products needed to safeguard editorial integrity? If so, what should these be?**

Broadcasters and advertisers will not want to alienate viewers by having product placement that does not sit well within the editorial context and flow of the programme.

These are issues that Ofcom should work through, in the context of developing rules for the Broadcast Code if product placement is permitted. One relevant example is Ofcom's Sponsorship Code which already prohibits direct encouragement to purchase goods.

#### **23-26 Tobacco, alcohol, HFSS foods, gambling**

- 23. Should television placement of smoking accessories such as cigarette papers and pipes be prohibited?**
- 24. Should television placement of alcohol, HFSS foods or gambling be subject to an outright prohibition; or, if not prohibited, should it be subject to restrictions of some kind?**
- 25. If it is not practicable to apply the detail of the BCAP Code rules on alcohol advertising to alcohol product placement, would the simple AVMS Directive rules that alcohol advertising must not be aimed specifically at minors and must not encourage immoderate consumption provide adequate safeguards?**
- 26. Are there any alternative forms of safeguard that may be appropriate?**

It may be appropriate to apply some or all of these restrictions, but UK law should not go further than the wording of the Directive. Further detail about the practical safeguards

should be left to Ofcom's Broadcast Code. Editorial requirements and context is important, and Ofcom must balance these with consumer protection principles.

### **27-28 Monitoring**

**27. What methods of assessment and monitoring would be most effective in ensuring that there was accurate and reliable information about the actual effects of any introduction of product placement in these areas?**

**28. Would it be possible or desirable to levy a charge on product placement to enable monitoring and/or research to take place?**

These issues are outside our remit.

### **29-30 Other types of product**

**29. Are there any other product or service categories whose placement should be subject to prohibition or restriction?**

**30. If so, what, and why?**

We do not think there are other products or services that should be banned from product placement. The Directive should not be gold-plated.

### **31-32 Terms of trade**

These issues are outside our remit.

### **32 Prop placement market**

**What impact would allowing television product placement have on the existing prop placement market, and on the ability of broadcasters to source props and services in this way?**

We are not in a position to assess the impact on prop placement but suggest it would be worthwhile to look at other markets where product placement is allowed, in order to ascertain its effect. It is important to ensure that broadcasters' ability cost-effectively to source props and services needed for programmes is not undermined and to give advertisers reassurance that there will still be unpaid prop placement opportunities.

### **34-37 Signalling product placement to viewers**

**34. How should television product placement be notified to viewers?**

**35. When should it be notified to viewers – should we go beyond the EU requirement for notification before and after the programme and after any ad breaks?**

**36. Should notifications to viewers mention the product(s) which has or have been placed?**

**37. Do you have any other views about alerting viewers to the presence of product placement in a television programme?**

The existence of product placement in a programme should be signalled to viewers in accordance with the Directive requirements, but in line with minimum generic industry-wide standards. There should be transparency and notification to the viewer, but not gold-plating. A complex system of detailed notification of product placement by every advertiser would be wrong and would pose a danger of providing products with undue prominence.

### **38-39 Thematic placement**

**38. Should the prohibition of ‘thematic placement’ extend to placements which feature only generic products and services or types of product and service rather than branded ones?**

**39. Should the prohibition of ‘thematic placement’ extend to the placement in a programme of references to the beliefs, policies, aims or objectives of the placer?**

No comment to make.

### **40-41 Negative and simulated payments**

**40. If television product placement is to be allowed, should there be rules which prevent negative placements?**

We understand that this would be an infringement of trade mark law.

**41. Should the regulation of television product placement, if it is to be allowed, contain specific controls on the use of simulated products?**

It might be appropriate for Ofcom to make a judgement on this, in the context of its Broadcast Code. Clearly, simulated products should not be used in order to break the rules on banned product categories, but there might be some good reasons (eg health and safety) justifying why they are being used.

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