



**Department for Culture, Media  
and Sport**

**Consultation on Product Placement on Television**

An IPA response

**December 2009**

# **Consultation on product placement on television**

The IPA welcomes this opportunity to submit views on the above.

## **About the IPA**

The Institute of Practitioners in Advertising (the “IPA”) is the trade association and professional institute for UK advertising agencies. Our 265 corporate members are primarily concerned with providing strategic advice on marketing communications, including creating and/or placing advertising. Based throughout the country, they are responsible for over 85%<sup>1</sup> of the UK’s advertising agency business and play a pivotal role in advising the nation’s companies on how they should deploy their total marketing communications spend of £42 billion<sup>2</sup>.

The IPA welcomes the opportunity to respond to the consultation run by the Department of Culture, Media and Sport on the implementation of the provisions of the Audiovisual Media Services (“the AVMS”) Directive regarding product placement.

## **General comments**

The IPA firmly believes that the UK Government should exercise its power granted under Article 3(g) of the AVMS Directive (the “Directive”) to derogate from the general prohibition on product placement, and to allow product placement in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes.

While we are aware that reservations have been expressed elsewhere that such a move might pose a threat to programme integrity, we have pointed out both to the Minister and the DCMS that these risks are minimal, highlighting the careful consideration given in the European legislative process to a regulatory framework to ensure that viewers will be protected.

Not only this, we have indicated:

- that the UK population has already become well acquainted with paid-for product placement through sport and overseas programming, without any discernible adverse consequences;
- that Ofcom research commissioned on viewer attitudes has shown that viewers accept controlled placement as a means of continuing to fund television - and, indeed, see this as preferable to additional conventional advertising ( - see “The Future Of Television Funding” Ofcom, 2005)

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<sup>1</sup> Nielsen MMR 2005

<sup>2</sup> Bellwether Report 2005

- that revenues from considered responsible placement would assist commercial broadcasters' ability to continue to invest large amounts in original UK produced content and to compete with other advertising media in a rapidly changing media landscape;
- That while it might pose little risk to the integrity of UK programming, product placement would be of considerable benefit in enabling the nation's creative industries to operate on a more level playing field with their counterparts in both the USA and those European states which do liberalise in this area.

### **Specific questions**

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

We believe the safeguards in the AVMS Directive are already quite sufficient to protect both the interests of the public and the integrity of programming.

As has been pointed out in earlier IPA submissions on this subject, it is not in the interests of programme makers/broadcasters to abuse product placement - as, if they do, they know their viewers will be quick to exercise their right of choice - and switch to an alternative channel.

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

Given that Ofcom is already highly effective in regulating broadcast sponsorship, we believe that controls on product placement should be similarly placed under its remit.

To adopt a legal approach would, we believe, be unnecessarily complicated and heavy-handed – not only resulting in no greater "protection" for the public but a set-up which would be inherently less flexible and ready to adapt to an ever-changing media environment

### **Commercial advantages**

#### **3. Is the range of figures for the potential financial benefit of introducing television product placement set out a Part 3 of this document (between £25m and £140m p.a.) still broadly applicable?**

We believe these figures remain valid.

#### **4. Is it possible to narrow this wide range of estimates?**

The IPA is not in a position to narrow this range.

**5. Are there grounds for thinking that the potential benefits have increased or decreased since last year?**

We are not aware of any increase/decrease in the potential benefits since last year.

**6. Has any new evidence emerged about the possible benefits since the earlier consultation?**

We are not aware of any new evidence.

**Programme genres**

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

We do not believe that any of the programme genres permitted by the AVMS Directive should be excluded. This would result in potential advantage to film makers in other jurisdictions.

**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?**

We do not believe that it would be helpful to be more specific as to what is meant by "films and series" since, as the DCMS itself suggests, the variety of concepts and formats and the speed with which they mutate, make it difficult to devise hard and fast rules.

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

We agree with the DCMS view that product placement should not take place within religious, news, current affairs, consumer and children's programming.

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

We do not believe UK controls on product placement need to be more specific.

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

The only justification we can envisage is if the programming is of particular interest to children - and this context we would suggest that the current "120 index" test as applied re HFSS/ alcohol advertising should be used, and a decision made on this basis as to whether product placement continues to be appropriate.

**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?**

We do not believe there is a need to be more specific.

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

(See the answer to Q.11 above)

**14. Should there be a specific prohibition of product placement in**

- **religious programmes**
- **news programmes;**
- **current affairs programmes;**
- **consumer programmes;**

We are content for prohibition to apply to the above types of programming.

We do not believe there are any additional sectors in which product placement should be prohibited.

**Children**

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

Given our agreement that product placement should be prohibited in children's programming, it follows that such a prohibition should equally be applied to programming with a "disproportionately high child audience."

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

Clearly, assessments of the potential appeal of any programming to specific audiences is difficult, however, programme makers and schedulers should be able to draw on their experience of the formats and genres to assist in this.

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

As indicated above, we would suggest that the “120 Index” test should be applied.

**18. Should there be restrictions on placing certain types of products (e.g. 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?**

To be consistent, we believe restrictions on the paid-for placement of the above products should be placed on programming with a disproportionately high child audience - and that these restrictions should be in line those currently applied to spot advertising.

However, it would be inappropriate to prohibit *any* appearance of such items if they are editorially required.

**Editorial independence; undue prominence**

**20. How could ‘undue prominence’ be avoided, given the commercial imperative for audiences to recognize the products and services that have been placed?**

We recognize the difficulty of producing detailed rules to cover undue prominence - having said this, it should be possible to identify "exceptional and unnatural" prominence, where this detracts from the natural flow of the programming and noticeably impinges on editorial.

As indicated at the outset of this paper, it will not be in the interests of either programme makers or broadcasters to abuse product placement.

**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?**

The existing Ofcom Sponsorship Code already prohibits direct encouragement to purchase goods, and we believe a similar restriction should be applied to product placement.

**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?**

While we believe that programme producers/broadcasters/ the viewing public will be the greatest safeguards of editorial integrity, we recognize that in some circumstances, financial pressure may be brought to bear, which could threaten editorial integrity.

In this context, we would suggest that exceptional and unnatural prominence, where this detracts from the natural flow of the programming would form the basis for intervention.

**Tobacco, alcohol, HFSS foods, gambling**

**23. Should television placement of smoking accessories such as cigarette papers and pipes be prohibited?**

Given that the advertising of tobacco/smoking products is prohibited, it follows that there should be no paid-for product placement permitted for such items.

However, it would be inappropriate to prohibit *any* non-paid-for appearance of such items if they are editorially required.

**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?**

The placement of the above items should be permitted where they are appropriate to editorial and would not appear in prohibited genres.

**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?**

We believe the AVMS Directive rules indicated above will provide adequate safeguards with regard to alcohol placement.

It is not practicable to apply the detail of the BCAP Code rules on the content of alcohol advertising to product placement for a variety of reasons. The BCAP Code is not designed to regulate the placement of products; it specifically deals with the content of a commercial. In addition the application of BCAP rules, presumably by the ASA is not recommended. The IPA believes Ofcom should remain responsible for product placement along with its present application of the sponsorship rules and any imposition of the BCAP Codes by Government/Ofcom is not acceptable or advisable – it would also mean government and Ofcom seeking to intervene and alter editorial content.

**26. Are there any alternative forms of safeguard that may be appropriate?**

We do not believe any additional/alternative safeguards are required beyond the indicated AVMS Directive rules.

**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?**

We are not qualified to put forward a view in this area.

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

We do not believe it would be desirable to levy a charge on product placement in this context, since the upshot would be to stifle the initiative before it has gained breath.

**Other types of product**

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

No.

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

N/A

**Terms of trade**

**31. If television product placement is allowed, what models might there be for revenue sharing between broadcaster and producer?**

We do not believe that the IPA is able to comment. This would be a matter for commercial negotiation between the parties, and as such should not be an area for government regulation. However most product placement will not be a matter for broadcasters but rather production companies and the advertiser client. If producers wish to share this revenue it will be up to them.

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**32. Does the industry anticipate that the commercial negotiation of product placement arrangements would form part of the terms of trade between broadcasters and producers?**

(See Q. 31 above) However our unofficial view is that this would be potentially anti-competitive and place unacceptable restrictions on the producers. This is not an area in which government ought to intervene.

**Prop placement market**

**33. 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?**

Clearly, the proposed move would hold significant implications for the existing prop placement market. However, the IPA is not in a position to assess the scale of this impact and would suggest that DCMS consults appropriate authorities in the US to see what happens there. However prop placement must be permitted otherwise production will become impossible.

**Signalling product placement to viewers**

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

While appreciating the more onerous requirements of the AVMS Directive, we believe the best method of notifying viewers re product placement would be within the credits appearing at the end of the programme.

**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?**

As indicated above, we believe that product placement should be notified at the end of the programme.

We certainly do not believe that the UK should go beyond the EU requirement, and indeed would go further to state that current AVMS Directive grants product placement a level of importance/exposure which is not only clumsy and massively in excess of that appropriate or warranted, but which is impractical meaningfully to impose without potential clashes with advertising breaks and programme sponsorship.

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

We believe that mention should be no more than notification that there is product placement in the programme and at worst be restricted to the names of manufacturers /companies, rather than individual products.

Naming the product will only give those products more exposure and again may clash with sponsorship idents and advertising.

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

As indicated, we believe that the current notification requirements contained in the AVMS Directive not only represent massive overkill - but are largely unworkable. Instead we should recommend the DCMS follows the far simpler approaches used in the USA, which seem to be effective in informing the public, without the major complications noted above.

***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?**

Any thematic placement restrictions should not be broader or more restrictive than they need to be.

**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?**

(See Q38 above)

***Negative and simulated placements***

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

We do not believe that negative placement should be permitted. Having said this, the law already prevents a brand from using or referring to another, except for genuinely comparative reasons, under infringement of trade mark legislation.

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

If the rationale for using simulated versions of a product (e.g. a fake cigarette) is purely a technical means to escape prohibition of the real product, then they, too, should be prohibited since their impact on audiences will be the same. However if for purely practical reasons a simulated product is used for the purposes of filming safely for example this would be entirely reasonable.

For further comment and information, please contact:

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