

## Client Alert: New Rules on Product Placement Imminent

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The issue of Product Placement is going to be widely discussed in Europe in 2006 with regard to television and other media platforms. Product placement can be defined in general terms as the inclusion of branded products in programming in return for payment.

It has long been acknowledged as anomalous that Hollywood films and more recently US TV series shown on our screens include fairly blatant examples of product placement whereas product placement within European television productions has not been allowed.

This position looks set to change for a number of reasons. The European Commission is concerned that there should be a consistent approach to regulation and has published a proposal for an updated draft of the Television Without Frontiers Directive which paves the way for a regulated form of product placement throughout the EU. Additionally, OFCOM appears to be concerned at the alleged funding problems facing commercial broadcasters in the UK, and on 19<sup>th</sup> December 2005, published a consultation paper on product placement. The closing date for responses is 13<sup>th</sup> March 2006. It is clear from the consultation that at least some relaxation on the current UK ban on product placement is very likely to be introduced. It is also clear that the genres of programming where product placement is thought most appropriate are sport, film and drama.

### Issues

There are naturally, a number of concerns and questions which are being raised in the process. For example:

- it has long been a fundamental tenet that advertising and programming must be kept distinct and separate from one another and that there should be no in-programme or subliminal advertising. It seems likely that this will be addressed by requiring broadcasters to give a clear statement advising viewers (probably in advance) that a programme contains product placement.
- will product placement be subject to the same rules and codes as advertising? To take an example, imagine a situation in which a car manufacturer is paying for its cars to be used in a programme. If the car is driven wildly or dangerously and product placement were to be subject to the Television Advertising Standards Code, that would breach the current code. Alternatively, if the car was provided as Prop Placement (ie. provided free) it would not be subject to the Code.
- editorial independence of the broadcaster has always been and will remain paramount. It will also be a challenge to reconcile the current mantra of no undue prominence with the introduction of product placement or it may be dispensed with.
- not all genres of programmes will be permitted to include product placement. News/Current Affairs and Children's programming look certain to be excluded categories.

### Consequences

In the short term it is likely that any relaxation will be cautious but it will mean that, for the first time, broadcasters/programme makers will be able to be paid to include brands visible in programmes. For

example in a studio presentation of a sports event, bottles of mineral water could be placed on table in front of pundits in return for a fee to show them on-screen. The new regime will not involve a radical sea-change to allow product placement to influence or dictate the editorial content of programming (as is sometimes the case in the USA for example).

Whilst obviously films and drama present many more and obvious opportunities for such activity, product placement will still be relevant for sport. For producers and broadcasters of sports programming an additional revenue stream would be opened up and important issues, such as who should receive the revenues, will need to be negotiated and resolved. This may be quite limited for actual coverage of live events but studio presentations, presenters in vision, and various edited programmes will present real opportunities for product placement.

Whilst their interests are not referred to in the consultation, for sports rights holders it raises further questions. Naturally, they will want to control or participate in the revenues from any product placement fees which relate to their events. Secondly, as with broadcast sponsorship before it, product placement will inevitably create new opportunities for event sponsors to either be ambushed (e.g. a Coca-Cola sponsored event where Pepsi cans appear in studios or in presenters hands) or to gain extra inventory that can be secured for the rights holder and sold to event sponsors.

Right holders and sponsors alike will therefore need to protect themselves and their interests with regard to the potential commercial opportunities and threats presented by product placement in their commercial agreements.

The issue is likely to occupy a lot of time and column inches over the next few months. As a reality check, it is worth noting that in the US product placement on television, although growing fast, reportedly contributes only about 1% (one per cent) of television advertising revenue and in the UK the short term prognosis is even lower. However, as broadcasters seek to exploit all legitimate revenue streams it has the claimed advantage of being perceived as particularly relevant to the 18-35 year old market which is the most difficult to reach via spot advertising. Accordingly, this is likely to be an important development that will require attention and action.

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