

Question 1: Is the total prohibition on product placement no longer proportionate to the potential detriment it seeks to prevent?:

Question 2: Do stakeholders agree that product placement should not be permitted in:

- a) news
- b) current affairs
- c) children programmes?:

Question 3: Do stakeholders consider that if product placement were introduced, a phased approach should be adopted that, in the short-term at least, prohibited product placement from use in:

- d) factual programmes
- e) drama
- f) any additional genres?:

Question 4: If product placement were permitted in these genres at the outset how feasible do stakeholders believe it would be for Ofcom to re-impose restrictions on these genres at a future date?:

Question 5: Do stakeholders agree with Ofcom's provisional view that the use of product placement in programmes should be:

- a) clearly identified and
- b) clearly identified at the start of any programme in which it is contained?:

Question 6: Can the current concept of undue prominence be retained in a regulatory environment that permits product placement?:

Question 7:

a) Is it sufficient to rely on the editorial responsibility of broadcasters to regulate the potential excesses of product placement?

b) Do stakeholders believe that Ofcom should, initially at least, apply regulatory constraints to the way in which product placement appears in programmes e.g. prohibiting scripted references to attributes of products, limiting the length of time products, logos, brand names etc can appear? :

Question 8: Should *calls to action* be permitted around placed products or services e.g. *red button interactivity*, *buy now* exhortations from presenters? :

Question 9: Do stakeholders agree with Ofcom's provisional view that:

a) products and services prohibited from advertising cannot be placed in programmes?

b) only products and services that would be permitted to advertise in breaks around a particular programme may be placed in that programme?: MHRA response:

Preamble

These responses are provided by the Medicines and Healthcare products Regulatory Agency (MHRA). The MHRA aims to enhance and safeguard the health of the public by ensuring that medicines and medical devices work, and are acceptably safe. One aspect of this role is the statutory regulation of medicines advertising. Our response is therefore limited to aspects of the consultation relating to the promotion of medicinal products.

The law recognises that medicines cannot be treated as an ordinary general commodity because they have the potential for harmful as well as beneficial effects and can cause serious problems if not used safely. For this reason to protect public health there are specific UK Regulations, based on European law, that strictly control the advertising and promotion of medicinal products.

Question 9a

Yes. We agree with Ofcom that it is not acceptable that placement of prescription only medicines (POMs) in programming should undermine both the Broadcast Advertising Code and the prohibition in the Medicines (Advertising) Regulations 1994. The Regulations strictly prohibit advertising and promotion of prescription only medicines to the public, in particular any advertisement that is likely to lead to the use of a POM.

The main reason for this restriction is to protect public health because POMs are potent drugs that must be taken under medical supervision. The decision to prescribe a particular medicine is taken by a qualified health professional on the basis of an assessment of the risks and benefits of the product for the patient and informed discussion with the patient. Patient requests for a particular product based in whole or in part on advertising through placement in TV programmes should have no part in this process.

Question 9b

MHRA response: Our response to Question 10, below, strongly argues that over the counter medicines should be excluded from use in product placement. Notwithstanding this, should placement be allowed then we agree with this proposal. The restrictions on advertising medicines in breaks around particular programming such as children's TV are designed to protect public health by upholding the legal requirement that medicines should not be advertised to children. As argued above, placement should not be used to undermine the Code and the legal restrictions for medicines that are designed to protect public health.

Question 10: Are there additional products not currently prohibited from advertising that should be excluded from use in product placement e.g. over the counter medicines?: MHRA response:

We agree strongly that over the counter medicines should be excluded from use in product placement. The law recognises that the special nature of medicines requires additional restrictions on their advertising to ensure safe use and protect public health. These safety measures become more important as more potent drugs are being made available over the counter where it is considered safe for consumers to self-medicate.

In many cases these newer products are only supplied by a pharmacist following individual consultation so that patient safety is not compromised.

Advertising of medicines should be on the basis of the objective properties of the product so as to provide protection for the patient. It has to reflect any special conditions in the authorisation such as the need for pharmacy advice or a medical diagnosis. These safeguards could be undermined by placement in programming.

The endorsement of medicines in advertising by celebrities (and by scientists and health professionals) is already specifically prohibited under the Regulations. It is likely that any product placement in programming would breach this prohibition, which is found in both UK and European law.

Question 11: Are there other provisions of the Advertising Codes that should be extended to product placement e.g. creative treatments, substantiation of claims?:

Question 12: Is the market best placed to determine the commercial parameters that should govern product placement negotiations?:

Question 13: Should any deregulation of product placement apply as appropriate to radio broadcasting?: MHRA response:

The legislative restrictions apply to all forms of advertising and the Radio Advertising Code has similar restrictions for medicines to the Broadcast Advertising Code. Our view is that the arguments above also apply to radio and that any restrictions on product placement for medicines should apply equally to radio advertising.

Additional Comments: