

## Section Nine: Commercial References in Television Programming

(Relevant legislation includes, in particular, sections 319(2)(fa), (i) and (j) and 319(4) (a), (c), (e) and (f), section 321(1) and (4) and section 324(3) of the Communications Act 2003; section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2), Articles 9, 10, 11, and Chapter VII (Articles 19 to 26) of the Audiovisual Media Services Directive; regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008; section 21(1) of the Financial Services and Markets Act 2000; paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005; Article 10 of the European Convention on Human Rights; and the BBC Charter and Agreement.)

Clause 49 of the BBC Agreement makes provision for licence fee-funded BBC services to be partially funded by certain alternative means of finance. As this section applies to BBC UK broadcasting services funded by the licence fee and BBC on demand programme services (“BBC ODPS”), such content must comply with the rules in this Section.

This section of the Code covers all television programming and audiovisual programming on BBC ODPS.

Section Ten of the Code concerns radio only<sup>8</sup>. The media are subject to varying legislative requirements. Therefore where similar terminology is used in Sections Nine and Ten of the Code, it does not necessarily have the same meaning. Broadcasters should refer to the specific meanings provided in each section.

### Note:

This section of the Code contains a set of principles and general, overarching rules that apply to all commercial references in television programming. It also contains specific rules for different types of commercial activity (e.g. product placement, programme-related material, sponsorship), whether it is carried out by, or on behalf of commercial or non-commercial entities.

The rules ensure that the principles of editorial independence; distinction between advertising and editorial content; transparency of commercial arrangements; and consumer protection are maintained.

8. Including audio-only content on BBC ODPS.

All broadcast content except spot advertising and teleshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming.

#### Meaning of “commercial reference”:

Any visual or audio reference within programming to a product, service or trade mark (whether related to a commercial or non-commercial entity).

#### Meaning of “trade mark”:

In relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

## Principles

**To ensure that broadcasters maintain editorial independence and control over programming (editorial independence).**

**To ensure that there is distinction between editorial content and advertising (distinction).**

**To protect audiences from surreptitious advertising (transparency).**

**To ensure that audiences are protected from the risk of financial harm (consumer protection).**

**To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).**

## Rules

### General rules

#### Note:

Rules 9.1 to 9.5 apply to all commercial references included within television programming. They reflect the fact that the inclusion of commercial references in television programming creates a particular risk that the key principles may be, or appear to be, undermined.

- 9.1 Broadcasters must maintain independent editorial control over programming.
- 9.2 Broadcasters must ensure that editorial content is distinct from advertising.

**Note:**

For the definition of “advertising”, see Ofcom’s Code on the scheduling of television advertising (“COSTA”).

- 9.3 Surreptitious advertising is prohibited.

**Meaning of “surreptitious advertising”:**

Surreptitious advertising involves a reference to a product, service or trade mark within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising is likely to be considered intentional if it occurs in return for payment or other valuable consideration to the broadcaster or producer.

- 9.4 Products, services and trade marks must not be promoted in programming.

**Note:**

For specific exemptions to this rule, see rules on premium rate services (Rules 9.26 to 9.30) and rules on programme-related material (Rules 9.31 and 9.32).

- 9.5 No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
  - the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming.

## Product placement (and prop placement)

Broadcasters should note that the meanings set out below are statutory definitions included in UK legislation (unless indicated otherwise, the Communications Act 2003, as amended).

### Meaning of “product placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement.

### Meaning of “prop placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trade mark, or a reference to it, in the programme.

Prop placement involving the supply of products or services that are of “significant value” will be treated as product placement and must comply with Rules 9.6 to 9.14.

### Meaning of “significant value”:

A residual value that is more than trivial.

### Meaning of “residual value”:

Any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark, or a reference to it, in a programme.

**Meaning of “relevant provider”:**

The provider of the television programme service in which the programme is included or the producer of the programme.

**Meaning of “connected person”:**

Connected person has the same meaning as it has in section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2). The full definition is reproduced in Appendix 1 of the Code (Relevant UK Legislation). In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities):

- (a) a person who controls that person;
- (b) an associate of that person or of the person in (a); and
- (c) a body which is controlled by that person or an associate of that person.

Control and associate have the meanings set out in paragraph 1, Part 1, Schedule 2 of the 1990 Act. The full definition is reproduced in Appendix 1 of the Code (Relevant UK Legislation).

**Rules 9.6 to 9.11 apply to all programmes**

9.6 Product placement is prohibited except in the following programme genres:

- a) films;
- b) series made for television (or other audiovisual media services);
- c) sports programmes; and
- d) light entertainment programmes.

**Meaning of “films”:**

Includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services.

“Series made for television (or other audiovisual media services)” includes serials.

- 9.7 Programmes that fall within the permitted genres must not contain product placement if they are:
- a) news programmes; or
  - b) children’s programmes.

**Meaning of a “children’s programme”:**

In this context a children’s programme is “a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen”.

- 9.8 Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.

**Note:**

There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products, services or trade marks.

- 9.9 References to placed products, services and trade marks must not be promotional.
- 9.10 References to placed products, services and trade marks must not be unduly prominent.

**Note:**

Broadcasters should refer to the guidance accompanying Section Nine of the Code for further information on how to apply Rules 9.9 and 9.10.

- 9.11 The product placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- c) prescription-only medicines; or
- d) electronic cigarettes or refill containers.

#### Meaning of “electronic cigarette”:

An electronic cigarette is a product that (i) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and (ii) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

#### Meaning of “refill container”:

A refill container is a receptacle that (i) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette; and (ii) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

In addition to Rules 9.6 to 9.11, Rules 9.12 to 9.13 also apply to product placement included in all programmes produced under UK jurisdiction:

#### Meaning of “programmes produced under UK jurisdiction”:

“programmes produced under UK jurisdiction” means any programme produced or commissioned by either:

- a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or

b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).

9.12 Product placement is not permitted in the following:

- a) religious programmes;
- b) consumer advice programmes; or
- c) current affairs programmes.

**Meaning of “current affairs programme”:**

A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

9.13 The product placement of the following is prohibited:

- a) alcoholic drinks;
- b) foods or drinks high in fat, salt or sugar (“HFSS”);
- c) gambling;
- d) infant formula (baby milk), including follow-on formula;
- e) all medicinal products
- f) cigarette lighters, cigarette papers, or pipes intended for smoking; or
- g) any product, service or trade mark that is not allowed to be advertised on television.

**Note:**

HFSS food and drink products are defined by the nutrient profiling scheme which was devised by the UK's Food Standards Agency for use by Ofcom. This can be found at: <http://food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

In addition to Rules 9.6 to 9.13, Rule 9.14 also applies to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

- 9.14 Product placement must be signalled clearly, by means of a universal neutral logo, as follows:
- a) at the beginning of the programme in which the placement appears;
  - b) when the programme recommences after commercial breaks; and
  - c) at the end of the programme.

**Note:**

The universal neutral logo is defined by the criteria set out in Annex 1 to the guidance accompanying Section Nine of the Code.

**Acquired programmes and signalling:**

When a broadcaster acquires a programme containing product placement (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person), there is no signalling requirement. However, please note that such programmes must comply with any other relevant Code rules.

If a broadcaster acquires a programme from a third party on the condition that product placement within the programme will be broadcast (subject to compliance with relevant rules), the requirements of Rule 9.3 (surreptitious advertising) should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.

## Sponsorship

### Meaning of “sponsored programming”:

Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes.

### Meaning of “sponsor”:

Any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trade marks and/or its activities.

### Meaning of “costs”:

Any part of the costs connected to the production or broadcast of the programming.

### Note:

- 1) The rules seek to ensure editorial independence is preserved and a distinction is maintained between editorial and advertising. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.
- 2) With the exception of the sponsorship credits, any reference to a sponsor, its products, services or trade marks, in a sponsored programme that is a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement and must comply with Rules 9.6 to 9.14.

## Content that may not be sponsored

9.15 News and current affairs programmes must not be sponsored.

### Meaning of “current affairs programme”:

See meaning under Rule 9.12.

### Prohibited and restricted sponsors

9.16 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television. This rule does not apply to electronic cigarettes and refill containers which are subject to Rule 9.16(a).

- a) Sponsored programming with the aim or direct or indirect effect of promoting electronic cigarettes and/or refill containers is prohibited.

(See meaning of “electronic cigarette” and “refill container” under Rule 9.11 above.)

9.17 Sponsorship must comply with both the content and scheduling rules that apply to television advertising.

### Content of sponsored output

9.18 A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.

#### Note:

This rule should be read in conjunction with Rules 9.1 to 9.5.

Sponsorship arrangements should not lead to the creation or distortion of editorial content so that it becomes a vehicle for the purpose of promoting the sponsor or its interests.

There are limited circumstances in which a sponsor (or its products, services or trade marks) may be referred to during a programme it is sponsoring as a result of a commercial arrangement with the broadcaster or programme-maker. For example, in the case of a product placement arrangement (see Rules 9.6 to 9.14) or when the sponsorship arrangement is identified (see Rules 9.19 to 9.25).

An editorial reference in a programme to the sponsor (or its products, services or trade marks) that is not a result of a commercial arrangement with the broadcaster, the programme maker or a connected person, must comply with Rules 9.1 to 9.5.

## Sponsorship credits

- 9.19 Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:
- a) the identity of the sponsor by reference to its name or trade mark; and
  - b) the association between the sponsor and the sponsored content.
- 9.20 For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.

### Note:

Credits may also be broadcast entering and/or leaving a commercial break during the sponsored programme.

For other sponsored content (e.g. channels) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audiences understand that the content is sponsored.

- 9.21 Sponsorship credits must be distinct from editorial content.
- 9.22 Sponsorship credits must be distinct from advertising. In particular:
- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.
  - b) Sponsorship credits broadcast **during programmes** must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive

symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.

- 9.23 Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.
- 9.24 Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.
- 9.25 Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

### **Use of Controlled Premium Rate Services**

**Note:**

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

- 9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of controlled premium rate telephone services or other telephony services for which the revenue generated is shared between relevant parties.
- 9.27 Controlled premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:
- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
  - b) they fall within the meaning of programme-related material.

**Note:**

Each of the above exceptions is subject to the undue prominence rule.

- 9.28 Where a controlled premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured service must be clearly subsidiary to that primary purpose.
- 9.29 Any use of controlled premium rate telephone numbers must comply with the Code of Practice issued by PhonepayPlus.

### **Non-geographic call costs**

- 9.30 The cost to viewers for using non-geographic telephony services must be made clear to them and broadcast as appropriate.

#### **Note:**

Non-geographic telephony services are those telephone numbers that are not linked to a specific location. Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

### **Programme-related material (PRM)**

#### **Meaning of “programme-related material”:**

Programme-related material consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme.

#### **Notes:**

- 1) Broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit (as specified in Ofcom’s Code on the scheduling of television advertising (“COSTA”). The following rules support the key principle of editorial independence by ensuring that references to programme-related material are made primarily for editorial and not advertising reasons.
- 2) Programme-related material may be sponsored (see Rule 9.25).

- 9.31 Programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified.

**Note:**

Broadcasters should refer to the statutory definition of product placement (see meanings and rules preceding Rule 9.6). Where the inclusion of references during programmes to PRM could meet the definition of product placement, the promotion of such material should be kept distinct from editorial content to avoid issues being raised under Rule 9.9.

Likewise, where the PRM involves the promotion to the audience of the availability of products or services in return for payment, it is possible that this could meet the definition of television advertising (see COSTA). Therefore, such promotions should be kept distinct from editorial content (see Rule 9.2).

- 9.32 The broadcaster must retain responsibility for ensuring the appropriateness of promoting programme-related material.

### **Cross-promotions**

**Note:**

The cross-promotion of programmes, channels and other broadcasting-related services is covered by specific rules contained in the Cross-promotion Code. This is included as Part Two of the Broadcasting Code.

Broadcasters should note that cross-promotions should also comply with all relevant requirements of the Broadcasting Code and, in particular, Rules 9.1 to 9.5.

## Charity appeals

### Note:

Charity appeals are allowed in programming only if they are broadcast free of charge.

The following rules recognise that while charities differ from purely commercial entities, there is still a potential risk that the audience may suffer financial harm as a result of such appeals (consumer protection). Further, many charities operate in competition with one another and the rules therefore aim to ensure that charity appeals benefit a range of charities. Where appropriate, broadcasters must also pay particular attention to Section Five of the Code (Due Impartiality).

- 9.33 Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:
- a) the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
  - b) the organisation concerned is not prohibited from advertising on television.
- 9.34 Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.

## Financial promotions and investment recommendations

### Meaning of “financial promotion”:

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

### Meaning of an “investment recommendation”:

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.

**Note:**

The rules applying to such promotions and recommendations reflect the particular risk that such references could result in financial harm to the audience (consumer protection), and the resulting need for editorial independence and transparency to be maintained and protected.

- 9.35 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

**Appeals for funds for programming or services****Note:**

During programming, broadcasters may broadcast appeals for donations to make editorial content or fund their service.

Rules 9.36 to 9.39 reflect the potential for financial harm when broadcasters appeal for funds from viewers (consumer protection) and ensure editorial independence, transparency, and distinction between advertising and editorial content are maintained.

- 9.36 Viewers must be told the purpose of the appeal and how much it raises.
- 9.37 All donations must be separately accounted for and used for the purpose for which they were donated.
- 9.38 Broadcasters must not offer any additional benefits or other incentives to donors.
- 9.39 Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.