

## **OFCOM consultation Broadcasting Code Review**

### **Commercial reference in television programmes**

#### **Background to European Sponsorship Association**

The European Sponsorship Association (ESA) is the voice of the sponsorship industry across Europe. As a membership association, it looks after the interests of its members who are drawn from all areas of the sponsorship industry. These include sponsors, consultants, media owners, rights holders, suppliers and professional advisors.

The Association is committed to corporate responsibility and best practice and strives to raise industry standards through a series of educational events and an annual two-day conference. It provides members with a library of information and encourages continued learning through the ESA Continuous Professional Development (CPD) scheme. In addition to its networking activities, ESA is also active in policy and governance, representing the sponsorship industry at national and EU levels.

ESA's reach encompasses all types of sponsorship activity from sport, the media, the arts and culture through to music, environment and charity. It represents an impressive list of members who operate at a global, pan-European and national level.

It is the ESA Media Group, which is made up of media owners and agencies, who have compiled this response on behalf of ESA.

#### **General Comments**

The ESA support the introduction of paid product placement on UK television. Our principle reasons for holding this view are:

- that UK television viewers are used to product placement because a large proportion of UK television content is produced from outside the UK in countries where product placement is allowed and commonplace, whether that is in television drama or in cinematographic works;
- that Ofcom research commissioned on viewer attitudes has shown that viewers accept controlled placement as a means of continuing to fund television and see this as preferable to increasing the amount of traditional advertising;

- that it will support the sustainability of UK commercial television through generating a new source of income;
- that it will level the playing field of the UK television production industry with its counterparts in Europe and the US.

### **ESA's general principles**

We apply four general principles to our answers to the questions:

- Transparency will protect the public interest;
- Voluntary editorial and professional standards in both the broadcasting and commercial sectors will be a further defence;
- Practices in product placement should meet the test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned;
- Broadcasters, sponsors and commercial entities engaged in product placement should ensure that they have implemented adequate policies and procedures to ensure that abuses do not take place.

### **Proposal 1: Applying the rules to placement for a non-commercial purpose**

*Question 1.1: Do you agree that it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose? If not, please explain why.*

Yes.

*Question 1.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*

It needs to include the area of Government messaging, which is not explicit in current proposal.

*Question 1.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

Definition of non-commercial is important to articulate fully –this is currently not the case.

**Proposal 2: Clarification that product placement is permitted in single dramas**

*Question 2.1: Are there any impacts we have not identified above that you think would result from our proposal to clarify that single dramas are a form of film made for television? (See proposed Rule 9.8). If so, please provide evidence wherever possible.*

No.

**Question 2.2: Please identify any areas of this clarification which you consider Ofcom should issue guidance on.**

No further guidance necessary.

**Proposal 3: Clarification of the prohibition of product placement in news**

*Question 3.1: Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a)).*

No issues.

*Question 3.2: Please identify any areas of this rule which you consider Ofcom should issue guidance on.*

NA

**Proposal 4: Thematic placement**

*Question 4.1: Do you agree that clarification that thematic placement is prohibited is appropriate? (See proposed Rule 9.10). If not, please explain why.*

Where thematic placement does not exert unjustified influence on editorial, we believe strongly it should be permitted. We agree with the principle and thinking as to why this should be banned, but the approach proposed is likely to mean it happens behind closed doors anyway.

*Question 4.2: Do you agree with Ofcom's proposed description of thematic placement? (See proposed Rule 9.10). If not, please explain why, and suggest drafting changes, if appropriate.*

We would suggest there is more clarity with regard to the principle of allowing thematic placement as long as it does not exert unjustified editorial influence.

*Question 4.3: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*

As we have already expressed in answer to Questions 4.1, we strongly feel that allowing appropriate thematic placement would be appropriate if this is signposted to viewers as per the proposed PP signposting, i.e., 'TPP'. Ultimately, programme makers should be looking to make shows that are in touch with the real world and are factually accurate, so to seek counsel from the private sector and have expert input can only enhance the quality of programming output – the current proposal will deny this opportunity.

*Question 4.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

As above.

### **Proposal 5: Specialist factual programming**

*Question 5.1: Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.*

The definition of specialist factual programming concerns us with a considerable grey area around "current affairs", we can't see how it can be clearly defined and therefore how it can be policed effectively. We therefore believe specialist factual programmes should be allowed to accept paid product placement.

*Question 5.2: Do you agree with the meaning for "specialist factual programmes"? (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.*

See answer to Question 5.1

*Question 5.3: Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.*

See answer to Question 5.1

*Question 5.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

See answer to Question 5.1

### **Proposal 6: Additional prohibited categories**

*Question 6.1: Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.*

Yes – otherwise it will be difficult for all stakeholders to manage effectively and there could be a serious risk of banned advertisers using product placement as a means of buying television exposure through the “back door”.

*Question 6.2: Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*

Yes.

*Question 6.3: Do you agree that it is unnecessary to apply advertising scheduling restrictions to product placement? If not, please explain why.*

Yes

*Question 6.4: Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible.*

We are not aware of any potential impacts.

*Question 6.5: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

No special guidance required.

### **Proposal 7: Signalling**

*Question 7.1: Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.*

No, we believe a universal neutral logo is sufficient, an audio signal is not necessary. If a viewer can't see a PP logo they're very unlikely to be able to see a paid product placement in a programme. The audio signal is not required by EU law, would draw unnecessary presence of paid product placement and run the risk of causing viewer irritation.

*Question 7.2: Please provide comments on the proposed criteria for determining how any universal neutral logo looks, and any additional or alternative criteria which you consider should define the visual signal, including views on the nature, size and duration of the signal.*

The visual signal should be small and unobtrusive, as guidance we believe it should not be larger than a “channel bug” you see in the corner of the screen as it should not detract from the viewers enjoyment or give undue prominence to the existence of product placement.

*Question 7.3: Please provide comments on the proposed criteria for determining how any universal audio signal sounds, and any additional or alternative criteria which you consider should define the audio signal, including views on the nature and duration of the signal.*

We believe a universal visual signal will be sufficient.

*Question 7.4: Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom’s guidance. If you consider that the criteria should not be specified in either, please explain why.*

Agree as proposed, with no audio signal.

*Question 7.5: Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster’s website? (See Rule 9.17(a) and (b)). If not, please explain why.*

Yes to both, but text only accreditation, not logos, in the end credits.

*Question 7.6: Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.*

Yes

*Question 7.7: Do you agree that broadcasters should include additional description text alongside the visual and audio signal for the first month that they are transmitted? If not, please explain why.*

Yes – as long as this is a month across all channels simultaneously, not for each new programme.

*Question 7.8: Do you agree that broadcasters should transmit an audience awareness message if they show programmes that must be signalled during the first six months of the rules being in force? If not, please explain why.*

No, six months is excessive. In excess of 90% of the population would be exposed to a promotional airtime campaign within a four week period so we believe this period of time would be more appropriate. will be lost which is an issue as this could have an impact on sponsorship credits availability and length – which the new code should not impinge upon.

*Question 7.9: Please provide your comments on the proposals we have set out on the key messages, timing and duration of the audience awareness campaign.*

See answer to Question 7.8 above

*Question 7.10: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*

A balance need to be struck between making viewer aware of the existence of paid product placement, as required by law, versus giving undue prominence to brand who pay to have their products placed in television programmes. This is something that should be reviewed by Ofcom once product placement is established to ensure the right balance is achieved.

*Question 7.11: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

As above

### **Proposal 8: Sponsor references (product placement) within programmes**

*Question 8.1: Do you consider that it is appropriate to allow sponsors to product place in programmes they are sponsoring? If not, please explain why.*

Yes

*Question 8.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*

We do not see any impacts that should be taken into account.

*Question 8.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

NA

### **Proposal 9: Identifying sponsorship arrangements (sponsorship credits)**

*Question 9.1: Do you consider it is appropriate to replace the rule requiring sponsorship arrangements to be transparent with a requirement that all sponsorship credits include a clear statement informing the audience of the sponsorship arrangement? (See proposed Rule 9.22). If not, please explain why.*

We don't believe prescriptive language is necessary here; the current approach which allows flexibility of how the relationship is articulated is fine as long as there is a link made between sponsor and programme.

*Question 9.2: Do you consider it is appropriate to amend those rules requiring sponsorship credits to be separated from editorial and advertising, to rules requiring that credits must be distinct from editorial and advertising? (See proposed Rules 9.23 and 9.24). If not, please explain why.*

Yes, agree

*Question 9.3: Do you consider the drafting of proposed Rules 9.22, 9.23 and 9.24 is appropriate? If not, please explain why, and suggest drafting changes were appropriate.*

Yes, expect 9.22 as stated above – no need to formalise this.

*Question 9.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*

In the proposed changes made by Ofcom in 9.21 where it states "With the exception of the sponsorship credits, any reference to a sponsors that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement and must comply with 9.8 to 9.17", the impact of this proposed rule change needs to be carefully reconsidered.

Does this mean that products which are prohibited from having paid placement such as alcohol and HFSS foods, but whose products appear incidentally, or appear as paid placement because the programme has been made in a country which allows paid placement, would be precluded from being the broadcast sponsor of that programme?

There is a wider issue which the consultation does not appear to address which is with regard to the appearance of products prohibited from paid product placement but whose brands and branding is visible at events they sponsor. For example this could be drinks brands at golf and football events which are televised and are sponsored by these brands, for example Heineken's involvement with the Champions League football.

We believe Ofcom should provide clarity on this point as it appears, perhaps unintentionally, a further restriction on alcohol, HFSS and gambling brands are currently able to be the broadcast sponsor of television programmes whether their brands in them or not.

*Question 9.5: Please identify any areas of these proposals which, if it is accepted, you consider Ofcom should issue guidance on.*

No specific guidance required.

### **Proposal 10: Allowing sponsorship credits during programmes**

*Question 10.1: Do you consider that it is appropriate for sponsorship credits to be broadcast during programmes? (See proposed Rule 9.25). If not, please explain why.*

Yes we do think it can be appropriate.

*Question 10.2: Do you agree that sponsorship credits shown during programmes should not coincide with sponsor references (product placement) within the programme? (See proposed Rule 9.29). If not, please explain why.*

We disagree. We think it is entirely appropriate that a sponsorship credit and placed product broadcast close together is appropriate, especially if a brand has an appropriate editorial fit with the content. For example, a fashion brand should be able to place its product in the fashion strand it sponsors.

We would also argue that an appropriate editorial fit between a brand and a particular strand of programme related material which enhances the viewing experience should be allowed. For example Specsavers sponsorship of Hawk-Eye on Sky Sports cricket coverage of the Ashes series in 2009 which was in breach of the old rules should be allowed under the new rules.

*Question 10.3: Do you consider the drafting of proposed Rules 9.25 and 9.29 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*

9.25 yes, 9.29 no – as above.

*Question 10.4: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence to support these, wherever possible.*

NA

*Question 10.5: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

NA

### **Proposal 11: Content of sponsorship credits during programmes**

*Question 11.1: Do you consider that it is appropriate to limit the content of sponsorship credits broadcast during programmes? (See proposed Rule 9.27). If not, please explain why.*

Yes but needs clarity as to how restrictive - currently it sounds like it could be too restrictive to enable it to look attractive to the viewer, thus running the risk of putting viewers off.

*Question 11.2: Do you agree that sponsorship credits broadcast during programmes should not conflict with product placement restrictions? (See proposed Rule 9.28). If not, please explain why.*

Yes

*Question 11.3: Do you consider the drafting of proposed Rules 9.27 and 9.28 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*

OK, but timing restriction of sponsor credits coinciding with PP is an issue for us – as outlined above.

*Question 11.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*

As above

*Question 11.5: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

As above

### **Proposal 12: Principles**

*Question 12.1: Do you agree with the proposed revisions to the principles? If not, please explain why, and suggest drafting changes, where appropriate.*

Yes

*Question 12.2: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*

n/a

### **Proposal 13: Rule on distinction between editorial content and advertising**

*Question 13.1: Do you consider that the proposed Rule 9.2 requiring that there is distinction between editorial content and advertising is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*

Yes

*Question 13.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*

NA

*Question 13.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

NA

### **Proposal 14: Rules prohibiting surreptitious advertising**

*Question 14.1: Do you consider it is appropriate to include a rule prohibiting surreptitious advertising? If not, please explain why.*

Yes

*Question 14.2: Do you consider that the wording of the proposed rule and meaning is appropriate? (see proposed Rule 9.3). If not, please explain why, and suggest drafting changes, where appropriate.*

Yes

*Question 14.3: Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible.*

NA

*Question 14.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

No specific guidance required

### **Proposal 15: Removal of the virtual advertising rule**

*Question 15.1: Do you consider that it is appropriate to remove the virtual advertising rule? If not, please explain why.*

Agree

*Question 15.2: Please identify any potential impacts of the proposed removal of the virtual advertising rule that you consider should be taken into account, and provide evidence, wherever possible.*

Not applicable, all relevant requirements of the AVMS Directive and the Act

*Question 16.1: Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.*

Agree

*Question 16.2: Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible.*

No

*Question 16.3: Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code? If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.*

No

**New Code rules in force**

*Question 16.4: Do you agree that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom? If not, please explain why.*

Agree

*Question 16.5: If you would prefer that the revised Section Nine of the Code does not come into force at the time it is published, to allow a period of preparation/implementation, how long would you prefer this period to be? Please give reasoning.*

We see no reason to delay the introduction of a revised Section Nine.

Ends

**17 September 2010**