

Ofcom's Product Placement Consultation **Submission from Liverpool Football Club TV**

Introduction

LFC TV is the official television channel of Liverpool FC and features match action, news and interviews with the players, managerial staff and fans. Residents of the UK and Ireland can watch LFC TV on Sky Channel 434 and on Virgin Media Channel 544. The channel is also available to watch live online - anywhere in the world - on the official Liverpool Football Club website as part of the LFCTV Online package. LFC TV is currently free to all fans who have the basic Sky package and is available to fans who have the XL Package on Virgin.

Consultation Proposals

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, we agree with this proposal in the interests of maintaining a level-playing field and clarity for viewers.

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.

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

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.

We think it is incorrect to classify single dramas made for TV as films as these would then be subject to advertising break rules applicable to films made for cinema release. This could deter broadcasters from commissioning one-off dramas or pilots. We suggest single dramas be treated the same as drama series. There should be the same opportunity to product place in series and single dramas.

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

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).

Given the proposed removal of the existing rule 10.5, the dispensation for PP in programmes acquired from abroad, we would appreciate clarification on how licensees can enforce a prohibition of PP in a live news feed from abroad. Even if the feed was taken on a short delay, we ask for guidance on how licensees are realistically expected “to identify such instances of product placement and remove placement prior to transmission”.

We would seek clarification on how Ofcom proposes to define “news”. LFC TV is a single interest channel focussed on Liverpool Football Club and we understand the topical sports ‘news’ programming would be classed as factual entertainment and not news.

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

We would welcome guidance on how Ofcom will define news and confirmation that topical sports information, such as transfer window updates, will not be treated as ‘news’ and that such programming could attract product placement.

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

We accept that PP should not influence the content and scheduling of a programme in a way that affects the editorial independence of a story but we are not sure “thematic placement” fulfils this objective. The term is subject to wide interpretation and may lead to confusion amongst broadcasters and programme makers.

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 do not think “thematic placement” captures the intention of Rule 9.10 and would suggest the rule should prevent commercial interests from undermining editorial independence. A storyline may well be developed for its topical value but with no intent to promote a third party’s product. We suggest this issue be addressed in non-binding guidance which will inform licensees in this new area.

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

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

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.

We do not think this area of programming is directly relevant to LFC TV but we would like to register our concern that this proposal could prohibit PP in a wide range of programming.

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.

We do not agree with the meaning of “specialist factual” and suggest the prohibition be restricted to consumer advice programmes and not other factual programming.

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.

It seems disproportionate to prevent the programmes often hailed as core public service programmes from attracting new forms of revenue, via PP.

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

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.

We agree with this proposal.

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.

We would welcome clarification on the definition of “all medicinal products”. The legislation makes reference to “medicinal products and medical treatments available only on prescription in the Member State”. We would seek confirmation that the definition is not extended to vitamins, sports or nutritional drinks and bars, sports equipment products or pain-relief equipment such as a TENS machine.

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

We agree with this proposal.

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

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

As stated above, we would welcome guidance on what constitutes “medicinal products”.

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.

We support the introduction of a universal visual signal but question whether an audio signal is appropriate and suggest that, rather than help viewer understanding, it will add to 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 proportions appear reasonable but we would expect each broadcaster to be allowed the freedom to customise the logo for its channel.

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.

As stated above, if an audio signal was to be made at the start of each programme part the viewer may well find it irritating. We appreciate the policy intention of the proposal to ensure the visually-impaired community are informed of PP but suggest this could be better addressed in the audio-description services.

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.

We suggest the criteria be set out in guidance. We also suggest that PP be listed on Electronic Programme Guides and listings and that the logo only need be shown at the beginning and end of the programme.

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.

As LFC TV produces the majority of our output, we support listing products placed 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.

We think there is a danger of drawing too much attention to PP and think it is adequate to list the products in the credits without an explicit "reference to this given at the end of the programme" or need to list them on the website .

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.

We think this timescale is adequate to raise awareness of the introduction of PP.

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.

This seems disproportionate to the needs of viewers' understanding of product placement. They are well aware of PP in films and a six month information campaign

could irritate more than assist. Ofcom's qualitative research on product placement in 2005 showed good consumer understanding of product placement and funding mechanisms on TV.

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.

We have already commented on the duration proposed but agree with the key messages proposed. We suggest Ofcom's website is presented as the location for more information for viewers.

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.

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

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.

We believe it is appropriate to allow sponsors to PP in programmes they sponsor.

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 are concerned that the wording of Rule 9.21 which could have a detrimental impact on sponsors of football programming, particularly alcohol brands that sponsor football leagues and at times football teams. It would appear from rule 9.21 "with the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement and must comply with Rules 9.8 to 9.17". In the case of an alcohol brand sponsoring a football match, it would appear that if any branding for that sponsor was present on the pitch or players' kit, the programme would be in breach of 9.15 and the overall sponsorship arrangement would be placed in jeopardy. We are also concerned that the same may be applied to a sports energy drink, such as Lucozade Sport, were it to sponsor the programme and its drinking bottles be visible pitch-side. We suggest that Ofcom amends the final paragraph of rule 9.21 which is currently 'struck-through' : "sponsor references within editorial of the sponsored programming that do not result from the sponsorship arrangement must be non-promotional, editorially justified and incidental."

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

We would welcome guidance on when sponsorship and PP combined will and will not apply. For instance, where product references occur in the absence of any PP arrangement in a programme sponsored by a brand owner connected to that product, would this be classified as a straight-forward sponsorship, without PP?.

If there is no PP arrangement with the broadcaster, say in the case of an acquisition, we would appreciate confirmation that no PP signal would be required were the programme to be later sponsored by a product that featured in the programme.

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.

As indicated in Ofcom's 2005 research on funding mechanisms in TV, consumers consider sponsorship to be the most popular form of funding (in viewer preference) and they are well accustomed to how sponsor credits work. To add an additional requirement in the Code as suggested appears unnecessary and a backward step in terms of regulation.

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.

The proposed amendment appears logical.

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.

As stated above, we do not think the addition to rule 9.22 is appropriate or necessary. We suggest the existing rule "the relationship between the sponsor and the sponsored content must be made clear" is adequate, and appropriate at whatever juncture the credit appears e.g. before or during programmes.

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.

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

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.
We welcome this proposal and expect it could be applied to programme segments and credit programme-support material such as official sports data providers and time-keeping devices, such as the match clock.

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 do not know if the term "sponsor references" is intended to become 'code' for PP. This is potentially confusing for licensees and we suggest Ofcom adopt a different term to avoid blurrings between prop and product placement. We do not think rule 9.29 is necessary given the existence of rule 9.12 to prevent undue prominence.

We would welcome clarification on how rule 9.29 would apply to a sponsored credit for a technical device, such as the sponsorship of timekeeper on Formula 1 or a

football match. We understand this would not be PP but a credit to the programme-support sponsor. If LG, the time-keeper of Formula 1 on ITV, were to sponsor the F1 programme would this then be classified as sponsorship and PP?

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.

We do not support the inclusion of rule 9.29 and think sponsor credits should be allowed to coincide with the appearance of placed products/services as rule 9.12 prevents them being afforded undue prominence.

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.

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

We would welcome clarification on whether Ofcom proposes to quantify the frequency and placement of channel sponsorship credits in guidance or to leave this to the broadcasters' discretion (rule 9.25).

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.

We do not think that rule 9.27 should be so prescriptive e.g. requiring a verbal statement identifying the sponsorship arrangement. We would suggest rules similar to sponsor references in programme promotions i.e. brief and secondary would be appropriate.

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.

We agree with the sentiment of question 11.2 but do not think the proposed wording is clear to programme makers. It would be better explained by an example and expanded upon in guidance.

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.

As mentioned above, rule 9.27 should not be prescriptive and should refer to guidance on how credits during programmes should appear. We favour the term "brief and secondary". We do not think 9.28 is easy for programme makers to understand and needs to be better explained for non-regulatory users of the Code.

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.

We are also concerned that rule 9.28 will have a negative impact of long-standing sponsorships in sports programming as alcohol, sports drinks and nutritional foods (if considered HFSS products) would be prohibited from in-programme credits and discriminated against because they are being judged to be 'placed products' and not straightforward sponsorship arrangements.

Question 11.5: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.
As stated above, we would welcome clarification and guidance on the application of rules 9.27 and 9.28.

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.

We agree.

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.

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.

We support the proposal.

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.

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

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.

We think the rule 9.3 duplicates rule 9.4 and the point is adequately covered in the Principles.

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.

We think it is unnecessary.

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.

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

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.

We support the removal of the rule.

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.

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.

We think Ofcom may have exceeded the explicit requirements of the AVMS and the Act by targeting “specialist factual” programmes as a prohibited category, citing thematic placement as prohibited although it is not defined in the AVMS and combining sponsorship and in-programme sponsor references as product placement. We refer you to recital (91) p.105 of the consultation “the decisive criterion distinguishing sponsorship from product placement is the fact that in product placement the reference to a product is built into the action of a programme which is why the definition in Article 1(m) of Directive 89/552/EEC as amended by this Directive contains the word “within”. In contrast, sponsor references may be shown during a programme but are not part of the plot.”

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.

We think Ofcom should ensure principles and rules are adopted in the Code and details of how to interpret and apply the rules are set out in non-binding guidance.

Alternative approaches

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.

We think we have outlined these above.

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.

We support a rapid enforcement of the rules once published but would expect the rules and guidance to be published simultaneously to facilitate implementation.

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.

If guidance is not to be published simultaneously, we would suggest 1 month's preparation but no more than 2 months.

Submitted by Nina Berry

Liverpool FC TV

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