

Title:

Mr

Forename:

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Surname:

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Representing:

Organisation

Organisation (if applicable):

Madigan Cluff Ltd

Email:

What do you want Ofcom to keep confidential?

Keep nothing confidential

If you want part of your response kept confidential, which parts?

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

Yes

Additional comments:

Madigan Cluff has been involved with helping production companies and advertisers understand the value and opportunity of product placement over the last 2 years. The government's welcome decision to allow product placement has created the need for there to be clear guidelines which production companies, broadcasters and advertisers can operate within. This will allow UK production to be internationally competitive and at the same time ensure that viewers are not bombarded with inappropriate placement.

Much of the OFCOM consultation is a welcome clarification of how paid placement can be set within the current broadcast regulation framework. We welcome the fact that the bulk of the consultation does not create a labyrinth of regulation for placement and welcome the direction the document takes.

As a result we have chosen to submit our thoughts on certain key questions. The major issue we have with the proposal is that the definition of undue prominence is poorly defined, open to wide interpretation and in practice will subsequently be decided internally by OFCOM.

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.

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.

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.

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

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)).

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

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 disagree

We would challenge this. There are potential benefits (e.g., for services and products which promote the public good such as healthcare, saving, safe driving) where thematic placement can have a significant value both to the funding organisation and to the wider public interest. We recommend that the opportunity should be allowed for thematic placement - but that not only the organisation but also the issue should be visible in signalling and as part of any complaints procedure a test of in the public interest should exist.

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.

- A blanket ban on thematic placement would be unnecessarily limiting - indeed perfectly acceptable appearances by products currently achieved as free prop placement would not be allowed as paid placement in future, under these proposed rules.
- The rule seems to combine three different issues:-
 - o Should a company paying for placement be able to influence storyline/script
 - o Should it be possible to promote a group interest rather than an individual brand/ advertiser interest
 - o Should a 3rd party's aims, objectives, beliefs or interests be disclosed through placement (surely even placing a moving image of a brand does this? - is not a car being driven disclosing the interest of car manufacturers that people should use their product to move around?)

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 currently written, the definition of thematic placement is insufficiently clear and would need major interpretation by the individuals tasked with interpreting the findings. The first sentence of rule 9.10 should be retained. However the section from "in particular..." needs major clarification. We believe that this statement needs more thought.

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

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 believe that there should not be a blanket block on specialist factual programmes. Placement should clearly be signalled for any programme. Only where a programme clearly sets out to provide competitive assessment of a range of products/services which includes the funders product do we believe it would be appropriate either for there to be a block on placement or for there to be a clear aural flagging of the conflict in the lead into that segment of the programme (a 'declaration of interest').

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. :

As above we believe that the definition should be much tighter to cover only programmes where a conflict of interest can exist

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.

Placement is a major funding opportunity for programmes, categories which cannot obtain this funding will be disadvantaged and less likely to be commissioned. We therefore believe that only real conflicts of interest should preclude product placement happening

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

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.

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.

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

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.

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.

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.

We agree that signalling should be clear at the start/ end of the programme and that it should be very easy for viewers to obtain a list of the companies/products which have been placed.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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.

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.

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.

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

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.

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.

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

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.

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.

It appears that within the consultation there is no other place where it is appropriate to comment on rule 9.12 which is the definition of product placement.

The core rule on how placement is judged will be section 9.12 set out below

9.12 References to placed products, services and trade marks must not be unduly prominent. Undue prominence may result from the manner in which a placed product or service features within a programme, including, but not limited to:
the emphasis placed on a placed product/service/trade mark within a programme;
the frequency of references to a placed product/service/trade mark (taken across a scene, programme or series);
the editorial justification for references to a placed product/service/trade mark.

We believe that as set out, this definition of undue prominence is not specific and open to very wide interpretation. It would appear that the way in which this rule would be enforced in practice would be through consumers complaining to Ofcom and then for Ofcom to make a judgement.

In conventional advertising Ofcom refers to a range of bodies including the Broadcast Committee for Advertising Practice. In this instance, it is unclear how in practice Ofcom would adjudicate on what is reasonable on emphasis or frequency of reference.

Overall there are a series of measures which can show if the usage of placement is detracting from a programme including:-

- Whether a representative sample of the public see the placement as intrusive/ or detracts from their enjoyment of the programme.
- The performance of the programme in ratings and share of television audience, for instance
 - o Against the ratings performance of other programmes in the same slot
 - o Minute-by-minute ratings which would demonstrate that the audience tune out of the programme.

We strongly believe that there should be an evidence based process to gain views from the viewing public on what is reasonable; this should not solely be an internal judgement by Ofcom

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.

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.

See 16.1 above

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.

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.