



Responding to the Broadcasting Code Review: Commercial References in television programming consultation

About MirriAd

Launched in September 2007, MirriAd aims to revolutionize product placement for the digital era. MirriAd has developed an end to end solution able to digitally place brand imagery or products into any video on demand and at scale. MirriAd's digital placements have been extensively researched and proven to achieve excellent results for brands whilst positively impacting production values and the viewer experience on line and on TV.

Introduction

MirriAd welcomes that Product Placement is to be shortly allowed in the UK and the chance to comment on Ofcom's proposed rules through this consultation.

As a general point our view is that Ofcom should not go further than required by the AVMS Directive 2010 and the UK Legislation (SI 2010 – No 831). Already significant categories of products have been prohibited from product placement in programmes by the previous government (HFSS foods, Alcohol, Betting and Gaming, and Medicines). This alone will have a significant effect on the amount of revenue Broadcasters and Independent Production Companies will be able to earn through product placement. In the present difficult economic climate, and with the increasing use of sophisticated programme recorders which are increasingly limiting the impact of spot advertising, new revenue streams are urgently needed. Product placement is potentially an important new way of generating revenue.

MirriAd will respond to those questions which are felt to be most relevant to the company.

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 service?

This seems an eminently sensible proposal, as it will allow voluntary and charitable organisations to benefit from product placement, particularly with ad funded programming.

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?

The problem with the suggestion of classifying single dramas as films, to get round the AVMS rule prohibiting product placement in single dramas, is that the Ofcom Code on the Scheduling of Television Advertising treats dramas differently from films, with films having fewer breaks than dramas. This could have significant financial ramifications for broadcasters.

The compromise here is to leave the rule as proposed in 9.8, but in the guidance, to be published along with the updated Ofcom Broadcasting Code, state that if a broadcaster categorises all their dramas, whether series or not, under a general banner, such as 'Drama on Four' then this should be acceptable under the rule to classify a single drama as part of an over-arching drama category.

Question 4.1 & 4.2

Do you agree the clarification that thematic placement is appropriate?

Do you agree with Ofcom's proposed description of thematic placement.

Thematic placement is part of the AVMS. However the clarification provided by Ofcom on thematic product placement (**Rule 9.10**) is going to be a recipe for confusion.

In dramas/soaps, for example, there may be endless arguments about whether a washing machine breaking down to be replaced by a new one was a genuine story line or simply put there to promote a brand. Furthermore thematic product placement could be interpreted as a possible prohibition for some genres of factual entertainment, for example, cooking shows sponsored by a tomato sauce. If there are recipes featuring tomato sauce as one of the ingredients, then this could be defined as thematic placement. In our view the harm that thematic product placement is perceived to cause to the editorial independence of a broadcaster will be adequately covered by **Rules 9.11** (References to placed products, services and trade marks must not be promotional) and **9.12** (References to placed products, services and trade marks must not be unduly prominent).

In our view, having worked with many broadcasters and independent production companies, we do not believe they are going to damage the integrity of their programmes with the subsequent danger of alienating their viewers by distorting the story-lines and themes for commercial benefit.

In fact many of them have warmly welcomed MirriAd's digital product placement technology, as it allows producers and directors to get on with making their programmes, without having to worry whether the branded product is in the right place and being filmed in the correct manner on the set/location while the programme is being made. Placing the branded products, where appropriate, on programmes after they have been made and edited seems a good solution to ensuring the editorial integrity of many programmes, as well as giving advertisers a guaranteed presence.

Rule 9.10 should be limited to the rule, and the text clarifying what thematic placement should be removed. Guidance can be used to explain how rule **9.11** and **9.12** will be used to judge whether there has been a breach of the rule on thematic product placement.

Question 5.1

Do you consider that it is appropriate to prohibit product placement in specialist factual programmes?

This proposed addition to the categories of programming where product placement is prohibited (Rule 9.14 (d)) goes beyond the AVMS Directive, and would deny potential funding support to some of the most worthy, but poorly funded programming on UK television, such as the arts. Furthermore the definition of what constitutes specialist factual programming is open to misinterpretation. It could be argued that a significant amount of UK produced programming on channels such as the Discovery Channels, National Geographic and History Channel for example are educational, many are about science and technology and, as well, they may have an investigative basis such as Tony Robinson's 'Time Team'. Why should such programming potentially be denied extra funding through product placement opportunities, whether placed physically or through digital product placement.

Though we cannot believe it is Ofcom's intention to prevent such programming from being product placed, the broad categories outlined in the explanation of what constitutes 'specialist factual programming' will cause significant uncertainty for independent production companies and broadcasters as to what constitutes 'specialist factual programming'. Factual programming covering educational, science, medical or arts subjects is as broad as it is long. Ofcom will find itself having to provide continuing guidance to broadcasters, as to whether planned series falls into this category.

9.14(d) should be removed from the proposed Code revisions to avoid uncertainty for broadcasters and independent production companies. If over a period of time (12 months for example), after the introduction of product placement, Ofcom felt it was necessary to provide some guidance on genres of programming, other than those that are already excluded then this could be considered jointly with broadcasters and independent production companies.

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?

We accept that **Rule 9.15** is part of statute and therefore Ofcom has no choice but to include this list of prohibited product categories allowed to product place within programmes. Whilst it is logical to prohibit services and products that are banned from advertising from product placing in programmes, the other categories included in the list; alcohol, products high in fat, sugar and salt, gambling and all medicinal products seems illogical, as they are presently allowed to advertise and sponsor now, but with scheduling restrictions.

This rule is likely to lead to considerable viewer confusion as to what is prop placed or product placed. On screen, apart from the signalling, there will be nothing to tell the two categories apart.

In the short term we believe there is room to explore separating out non HFSS products and brands – which are subject to schedule restrictions on TV advertising through BCAP. For example: Brands that are intrinsically linked with HFSS products are treated the same as the product (i.e. schedule restricted). However the AVMS and Statutory Instrument specifies the product only – therefore Mirriad is proposing that non-HFSS products (such as Coke Zero) and branding (i.e. a Carling bar towel in a bar) should be permitted as product placement.

In the longer term we would like the DCMS to look again at this statutory requirement.

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 signal?

This requirement for both a universal visual and audio signal goes beyond the requirement for signalling as specified by the AVMS.

Whilst we accept the need for a universal visual signal, we do not accept the need for audio signalling.

A discrete visual signal will suffice - adding audio will simply cause huge viewer annoyance amongst the majority of the audience. In a multi-channel universe, and with the same requirements for signalling product placement on VOD, the same audio signal (whether as a tone or an announcement stating "This programme contains product placement") would become unbearable for viewers, with the possibility it would be heard up to 5 times in a scheduled one hour programme and be repeated continuously across much of the broadcast universe once product placement is established. In fact viewer annoyance could become so great that this requirement for audio signalling could become a disincentive to product placement.

Whilst we understand the wish to help viewers with visual impairment, it makes little sense to alienate the vast majority of the audience by requiring an audio signal. For those broadcasters who can provide audio description then on these services it would be logical to provide an audio signal to denote product placement.

In answer to **Question 7.2** on how any universal neutral logo should look, it is our view that it should not be on-screen for more than 3 seconds, should use the letters PP, should be discrete and should be no larger than the standard red button message used on interactive channels. This accords with Ofcom's suggested size in para 4.78 in the consultation, though our preference would be at the lower end of the suggested screen size 0.5%.

We have no comments on **Question 7.3**, as stated above we do not believe an audio signal, apart from channels with audio description is viable way forward

It would be logical and sensible (**Question 7.4**) to place the technical requirements for the visual signalling in guidance, as over time it may need to be changed or adjusted as audience response and practical issues are addressed.

As Ofcom knows screen clutter (largely text in credits and superimposed as graphics over programmes) has been a source of viewer concern and complaint over the years. Therefore, as far as it is possible, product placement should not add to this clutter. As a significant majority of viewers have access to the internet we believe the best approach to **Question 7.5** is that the broadcaster can decide whether the list of products placed in programmes should be listed on the broadcaster's website or at the end of the programme. The choice of website has the further benefit of reducing the chance of 'undue prominence' for the product which has been placed within the programme.

We agree with the wording in rule 9.17 (**Question 7.6**).

In answer to **Question 7.7** we feel that it is unnecessary to include additional text alongside the visual signal for the first month they are transmitted. Apart from the screen clutter this will cause, there is likely to be considerable publicity surrounding the launch of product placement as well as a separate audience awareness promotional campaign for broadcasters, who have included product placement in programmes.

We do not think that an awareness message (a promotion) should be transmitted for as long as six months on channels where programmes contain product placement (**Question 7.8**). This is excessive and is likely to cause considerable viewer annoyance. Half that time should be more than adequate to inform viewers as to what the symbol denoting product placement means. Furthermore there will be practical problems, as to when this awareness campaign should start. For example a broadcaster may not transmit any programmes with product placement for several years. Would they then be expected at this stage to run a 6 month awareness campaign? Clearly common sense needs to be used, and as the reference to an awareness campaign is within the proposed Ofcom guidance it seems that the necessary adjustments can be made here.

Our response to **Question 8.1** is that it is imperative to allow sponsors to product place within programmes they are sponsoring. Without this, product placement will be greatly restricted, and not provide the revenues which will help broadcasters and independent production companies in the production of new programming. This will be particularly true of advertiser funded programming. Therefore we totally support this proposed change to the rules.

Summary

We are not commenting on the rest of the consultation, as our expertise is in digital product placement and not in sponsorship.

However, we believe that Ofcom should not go beyond the requirements laid out in the AVMS, when considering the rules for product placement to be included in the revised Ofcom Broadcasting Code. Apart from the prohibited categories for HFSS (HFSS, Alcohol etc.) our view is that the Ofcom rules should be as close as possible to the AVMS requirements, and go no further.