

Product placement – on a screen near you

We've all seen the logo promoted, to help viewers understand – and we've looked for the Nescafe machine on *This Morning!*

Yes, product placement has arrived at last in UK TV production. After five years of lobbying and costing, a false start and a U-turn it is now allowed on our commercial TV screens: the biggest revolution in production and broadcast funding since the arrival of modern sponsorship some 20 years ago.



Post-recession, cash-strapped broadcasters have eagerly embraced advertiser funded programming (AFP) and in their never-ending battle with budgets will seize on well-developed product placement (PP) opportunities which match their channels' needs. As with AFP – a form of broadcast sponsorship – PP will demand complex negotiation with each broadcaster to define their aspirations, provide programme options and determine who gets what from this new revenue stream.

In addition, clear and shared understanding of the regulatory regime has never been more important. As in other areas of programme regulation, it's the broadcaster who's responsible to Ofcom for keeping to the rules. A serious breach means that the broadcaster can face a fine or other sanction. Yet it's the producer who will actually implement PP in programmes. Producers can expect to make many of the daily judgement calls, and handle much of the delicate relationship with funders, from the earliest stages of development through to post-production.

Any independent producer who wants to remain competitive needs to understand at least the basics. This note offers a first step in acquiring essential expertise.

But first, it's worth reflecting for a moment what PP is because there is often confusion with undue prominence or with prop placement. PP is when a company pays a TV channel or a programme maker to include its products or brands in a programme. A fashion company might pay for a presenter to wear its clothes; a car maker might pay for a character to mention one of its cars in a drama.

It's actually been around on British television screens for many years – but only in feature films and acquired programming, like US drama series. And the payment of course has gone only to the original producers or broadcasters overseas, or feature film studios. PP in the mass of programming commissioned and made for UK audiences has always been forbidden under the Broadcast Code, and breaches have attracted heavy fines on broadcasters.

PP is easily understood with a simple illustration. The opening titles of *Emmerdale* might include a shot of a Land Rover, and someone in a Barbour jacket. The car and the coat may well be sourced as prop placement – Land Rover and Barbour could supply them free, or at a cut price. That's long been permitted. Provided the goods/ brands are not unduly prominent, there was no problem.

What's been forbidden is anyone in or around the production-broadcast chain receiving payment or other reward for including the Land Rover or the Barbour. That would be product placement. In simple terms, this is what has changed –since the end of February the producers and broadcasters have been able to charge fees to Land Rover and Barbour for using their products and brands on screen.

That is, of course, putting it very simply. The Ofcom rules to make this work transparently and safeguard the interests of viewers and consumers are comprehensive and its guidance detailed. The basics are:

PP is *allowed* in:

- Films, which includes single dramas and documentaries
- TV series, which includes soaps and magazine shows
- entertainment programmes
- sports programmes

PP is *forbidden* in the following programmes:

- news;
- children's;
- religious;
- current affairs;
- consumer advice

This applies to:

- all programmes broadcast on Ofcom-licensed channels, including some channels broadcasting outside the UK
- Programmes made for or by the BBC's commercial services (but NOT those made for BBC licence-fee funded services - in which product placement is forbidden by the BBC Agreement) or acquired by the BBC

What products can't be placed under PP?

PP rules generally follow rules governing television advertising and sponsorship, so -

- Cigarettes and other tobacco products, along with prescription-only medicines, can't be PP'd in *any* programme
- Alcoholic drinks, gambling products, all other types of medicines, food and drink high in fat, salt or sugar, and baby milk can't be placed in UK programming
- Products that can't be advertised – such as guns, breath-testing devices and pornography – can't be PP'd in UK programmes either

What makes PP acceptable or unacceptable?

- Editorial independence and justification is key to the new PP regime. Justification is essential for a product to be placed in a programme and content must not be distorted to feature placed products, services or brands.
- PP arrangements must not take precedence over a programme's editorial needs – no commercial arrangements should impair or appear to impair editorial judgements; broadcasters must retain ultimate control over programme content and scheduling

(This can be seen as barring “thematic” PP: payment for the creation of story-lines or scripts for the purpose of featuring products/ the funder’s interests.)

- There must be sufficient editorial justification for references to placed products, services and trade marks – ensuring editorial independence, no promotion and no undue prominence
- There can be agreements about how a placed product will appear – e.g. will it be used by a particular character/ in specific scenes? – and it can be appropriate to determine product placement arrangements alongside the creation of editorial content itself. But no guarantee should be provided that could result in the relinquishing of editorial control.
- *Producers should be aware that Ofcom formally offers broadcasters the guidance: “retain the right to amend, remove or obscure product placement references if [you] judge that these do not comply with the Code.”*

PP must not:

- be promotional – e.g. include direct or indirect encouragement to purchase, advertising claims, endorsements, references to attributes or benefits
- be unduly prominent – the emphasis and frequency of product references and their editorial justification. In particular, story-lines which appear to have been constructed to feature placed products with a lack of editorial justification will be difficult to justify as duly prominent
- constitute “surreptitious advertising”

PP must be clear to the viewer:

The Ofcom PP “universal neutral logo” (on the right) must be used on screen in commissioned programmes:

- at the beginning of the programme
- at beginning of part – when the programme re-starts after a commercial break
- at the end of the programme



Lists of placed products **may** be provided, if the broadcaster wishes:

- in programme credits, when they must appear only in a neutral, non-promotional manner (e.g. no brand slogans, advertising messages)
- on a channel or a programme web-site

When there is generic placement – a placed type of product on which no branding or brand-associated features are evident – the PP signal may be insufficient. The risk of surreptitious advertising may increase.

- Additional steps should be considered – for example, naming the placer and product in the end credits

- If this is done in credits, the same requirements for neutral, non-promotional references should be met

This is a brief factual summary of the impact of relaxation of product placement rules. The new rules can be found in Ofcom's Broadcasting Code 2011 Section Nine, at www.ofcom.org.uk.

Ofcom acknowledges that in regulatory terms this is a major shift and a developing area, where it will continue to revise guidance by reference to examples as they arise. Independent compliance advice can play an invaluable role in such a complex and novel regulatory environment, and can help any producer develop and assess opportunities or deliver PP effectively. **Media Compliance Services LLP** are able to provide this comprehensive advice and support, in strict confidence.

For more information, contact **Media Compliance Services LLP** on mail@mcsllp.co.uk or visit www.mcsllp.co.uk to learn more about our services.

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