

Product Placement Update

Ofcom recently ruled that ITV network was in breach of the Ofcom Broadcasting Code (the “**Code**”) by broadcasting an episode of The Alan Titchmarsh Show which included an interview with Stephanie Beacham during which she promoted a range of Harley Street Skin Care products with which she is associated.

The Code states that:

“Rule 10.3: Products and services must not be promoted in programmes. This rule does not apply to programme-related material” and

“Rule 10.4: No undue prominence may be given in any programme to a product or service”.

During the interview, Ofcom observed that Alan Titchmarsh had steered the conversation towards skin care. Mr Titchmarsh said:

“You’re looking so tremendous, not just in your clothes but in your complexion and I notice, ladies and gentlemen, on the table here what I think in the trade they call unguents.”

He later promoted the Harley Street Skin Care website.

“Harleystreetskincare.co.uk. So it’ll be on the website - all the details.”

Ofcom noted that no explanation was given during the interview that Ms Beacham had a commercial arrangement with the products’ manufacturer. Ms Beacham made several claims during the show about the Harley Street Skin Care products. After discussing the fact that she had undergone cosmetic surgery, Ms Beacham took the opportunity to promote the products stating that:

“You need stuff that’s going to feed the skin. You need the tripeptides and anti-oxidants and vitamins... You need something that’s going to just stop the clock right now and keep your skin plump and dewy and radiant and here’s the kit [nods toward the products on the table].”

Ofcom compared this type of endorsement to the manner in which products are promoted in teleshopping programmes. The display of the products on the table heightened the similarity with teleshopping programmes. Ofcom ruled that such references and the style of the interview served to promote the products without sufficient editorial justification and therefore were in breach of rules 10.3 and 10.4 of the Code.

It will be interesting to see whether Ofcom’s position in relation to such promotion of products changes if following the current DCMS Consultation (see http://www.culture.gov.uk/reference_library/consultations/6421.aspx) the Government follows through with plans to permit product placement in certain types of programmes. Responses to the consultation are due by 8 January 2010.

The Audiovisual Media Services Directive (the “**AVMS Directive**”) regulates television advertising and product placement across the EU and contains provisions aimed at liberalising television regulation and which allow member states to introduce product placement in certain types of programmes including drama, light entertainment and sports programmes.

Despite an announcement in March 2009 that it would continue with the ban on product placement, in September 2009 the Government announced plans to permit product placement in certain types of UK produced television programmes, subject to consultation, with a view to implementing changes in 2010.

This announcement was welcomed by broadcasters who will be able to use product placement to help revive broadcast advertising revenues at a time of increasing competition for consumer attention, fragmentation of media and diminishing advertising revenues.

Following the announcement, Ofcom has stated that it will be reviewing sections 9 (Sponsorship) and 10 (Commercial Reference) of the Code in order to take account of the outcome of the consultation on product placement and the wider implications of any change in this area on other rules relating to commercial reference and sponsorship. The most up-to-date version of the Code is available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

However, it has been made clear that this relaxation of the regulations will not extend to children's programmes. Currently product placement is allowed in VOD (video on demand) programmes, and in films and television programmes acquired from outside the UK, subject to limitations set out in the Code. Following implementation of the AVMS Directive in the UK, product placement will be prohibited in all children's programmes produced after 19 December 2009, whether produced in the UK or acquired from outside the UK. Producers and broadcasters must therefore take special care when acquiring children's programming which may contain product placement which previously had been allowed.

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17 November 2009

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