
Product Placement

Lewis Silkin submission to
the DCMS consultation
8th January 2010

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About Lewis Silkin

Lewis Silkin LLP is a full service firm of solicitors based in the City of London, with the UK's leading advertising and marketing law practice, and extensive knowledge and experience of the converging media, brands and technology sectors.

Context

In the first half of 2009, UK advertisers spent £1.75 billion on internet advertising (for the first time more than they spent on TV advertising - 23.5% against 21.9% as a proportion of total advertising spend). Internet advertising was 4.6% up year on year, whereas TV advertising was 17% down. A liberalisation of the product placement regime would give TV programme-makers and broadcasters in the UK a potential avenue by which to bolster their diminishing revenue streams.

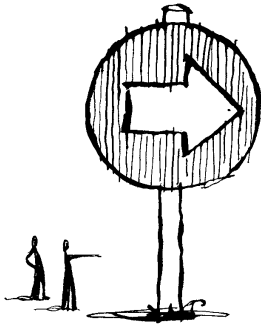
If the UK does not liberalise its product placement regime it will be almost alone in the EU, with the danger that programme-makers will be drawn to more favourable jurisdictions either within Europe or further afield (such as the US). The end result will be that fewer and fewer TV programmes will originate from the UK, while more and more will be sourced from overseas.

The irony is that programmes sourced from overseas will generally contain product placement (even if still subject to rules surrounding undue prominence). Indeed viewers

are already exposed to product placement in TV programmes bought in from overseas, in feature films, online, etc, with no obvious ill-effects. For the UK to foster the type of programming that it wants (domestically generated and well-regulated) it may be better to permit product placement subject to suitable controls, rather than continue the ban and ultimately have less control.

Advances in technology and changes in consumer habits mean that the distinction between linear and on-demand viewing of TV-like programming is being constantly eroded. The UK now permits product placement in online Video on Demand (VoD) services (subject to the restrictions set out in the Audiovisual Media Services Directive). Given the converging technologies, it seems outdated and increasingly unrealistic to maintain a distinction between the regulatory regimes for linear and online/VoD.





Recommendations

- Product placement on television should be permitted in the UK subject to appropriate safeguards.
- Those safeguards should target areas where there is the greatest and most legitimate concern, for instance to protect children and other vulnerable groups.
- UK consumers will in any event be exposed to product placement in TV programmes coming in from outside the UK, even more so than at present. It is not a situation where one could ban product placement on UK TV screens completely, even if the Government wanted to, so the sensible course will be to permit it subject to suitable regulation.
- Maintaining different rules for broadcast TV and online/on-demand programmes will become increasingly outdated – one can already view terrestrial TV and online content over the same screen. Getting rid of these distinctions underlies the Audiovisual Media Services Directive, and the UK regulatory regime should keep any remaining regulatory distinctions between linear and online/on-demand TV to a minimum.

- The consultation suggests a number of ways in which definitions could be made clearer and/or more stringent, but this raises the danger that the regulatory regime will be too rigid. In a sector where technologies and business models change on a daily basis it would be better to allow a sophisticated regulator (Ofcom) to develop the rules based squarely upon the Directive wording and in the light of experience, rather than for the UK try to legislate for every eventuality in advance.

Contacts

Lewis Silkin would be delighted to discuss any of the points made in this submission further.

Please feel free to contact any of the members of our Media, Brands & Technology (MBT) team.

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Giles helps clients avoid disputes and manage them when they do occur through negotiation, mediation or, if necessary, litigation. I specialise in intellectual property, media and regulatory issues with a particular focus on advertising, marketing and brands.

Clients include advertising and digital agencies, brand owners, media organisations, technology companies and insurers.

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Legal 500

"practical and efficient"



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Brinsley is one of the only two lawyers in the Campaign 'A list' of the most influential people in the UK advertising industry. He is also in the top tier of advertising lawyers in Chambers and legal 500.

Brinsley advises on all aspects of advertising, marketing and sales promotion law and regulation, clearance work, and disputes with the regulatory authorities. He acts for many of the UK's top advertising agencies and several major advertisers.

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Cliff heads our Media & Entertainment group and deals with all aspects of broadcasting, radio, content and new media. With over nine years' experience as Head of Business Affairs at the Central Division at Warner Music UK and as Director of Legal Affairs and Company Secretary of Capital Radio plc, Cliff has significant exposure to work with e-commerce operators, rights owners, broadcasters, telecommunications companies and producers.

Cliff specialises in the development, ownership, protection and exploitation of branded content within new business models such as music downloads, music publishing, CD compilations, format exploitation, Interactive DVDs, live events, online streaming and downloads, SMS and mobile telephony.

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