

# Product Placement and AVMS

YouTube requires that Producers comply with the rules of the European AVMS Directive to ensure the Content can be distributed freely in EMEA.

The following does not constitute legal advice - you're solely responsible for obtaining your own legal advice.

- A. Product Placement
- B. Sponsorship
- C. Other AVMS Content Rules
- D. Appendix A: Example of Breaches

*Please note that the below only covers AVMS rules. Other national European laws on e.g. defamation, copyright, hate speech, child protection will continue to apply.*

## **A. PRODUCT PLACEMENT**

Product placement is permissible in notified media services within the EU in certain circumstances.

### **What is product placement?**

The Directive defines “product placement” as any form of audiovisual commercial communication including or referencing a product, a service or trade mark so that it is featured within a programme, in return for payment or for similar consideration.

Note the phrase “or for similar consideration” means that there need not be a monetary payment. Any kind of “quid pro quo” may suffice; e.g. the brand covering certain content production costs or supplying equipment.

“Prop placement” is the provision of certain goods/services free of charge (or other valuable consideration), such as production props and prizes, for inclusion in a programme (where valuable goods are not retained). Prop placements are not subject to the disclosure requirements below. Where a brand places a product free of charge (i.e. prop placement) Producer must still comply with Rules 1- 4 below to avoid claims related to surreptitious advertising.

Product placement deals with commercial references within a programme - it is generally not intended to cover bumpers, credits etc appearing before/after content (which constitutes advertising or sponsorships).

### **In which types of content is product placement permitted?**

Product placement is allowed in:

- Cinematographic works
- Films and series made for audiovisual media service
- Light entertainment

- Sports programmes

### **In which types of content is product placement not permitted?**

Product placement is not allowed in:

- News and current affairs content
- Children's content
- In the UK, religious or consumer affairs content

### **Can all brands or products engage in product placement?**

No! The following cannot be placed:

- Cigarettes and other tobacco products
- Controlled drugs
- Psychoactive substances
- Radio devices such as mobile phone jammers, GPS jammers
- Electronic or smokeless cigarettes, cigarette lighters, papers or pipes intended for smoking
- Medicinal products generally

The following can be placed but strict additional rules apply. Escalate to YouTube Clearance if you plan one of the following integrations:

- Alcoholic drinks
- Infant formulae or follow-on formula
- Food or drink high in fat, salt or sugar
- Gambling services\*

### **What rules apply to product placement?**

Content can only include product placement if all of the following requirements are met:

1) The product placement must in no circumstances affect the **responsibility and editorial independence** of the content creator:

- YouTube and/or Producer must retain editorial control - the brand should not influence the content (although it can provide brand guidelines around the use of its product)
- there needs to be editorial justification for the references to the placed products - and brands should not dictate the timing and positioning of the product

2) The content must not **directly encourage the purchase or rental of goods or services**, in particular by making special promotional references (e.g. using slogans associated with the product) or providing an endorsement (e.g. a comment about the superlative nature of the product).

3) The content must not give **undue prominence** to the product or brand. Guidance/precedent suggests:

- Commercial references have been viewed as unduly prominent where only 2-3 seconds long, but where the inclusion was not editorially justifiable, or where there are numerous references that cumulatively result in undue prominence;
- Where a storyline or theme fits comfortably with the programme's understood character, issues of undue prominence (and also promotion and editorial independence) may be less likely to arise. While the Directive is fairly non-definitive in what constitutes undue

prominence, we have included some examples (Appendix A: Example of Breaches) of where placements have been found to be unduly prominent.

4) The way in which it is placed must not prejudice respect for human dignity, **encourage behaviour prejudicial to health and safety** (may be relevant in a prank series) or **cause harm to under-18s**.

5) Viewers must be **clearly informed** of the product placement -at the start and the end of the piece of content, and if the content resumes after an advertising break, in order to avoid any confusion on the part of the viewer. The UK-approved symbol (as below) is:

Opening and post ad disclaimer: ***The following program contains paid product placement P***



Note: Must be placed after any YTO or production company logos, but must appear within the first :10 - 20s of program

Ending disclaimer: ***The preceding program contained Product Placement P***



**Note:** *Must be placed before the start of any end credits screens or crawls.*

**Formatting guidelines:**

- **Duration:** :03 seconds
- **Sizing:** 1/21th of the video height
- **Placement:** lower right corner, within 16x9 title safe

**Assets can be found [here](#).**

6) It is a permitted type of product in a permitted type of programming (see lists of excluded products and programming above).

**What about goods being donated as prizes?**

- The donation of a competition prize is likely to be treated as prop placement provided the Producer or exhibitor receives no benefit beyond the value of the prize itself for featuring the prize in a programme. If we/production/creators receive payment, this is likely to be treated as product placement.
- If Producer receives payment, all the above rules still need to be complied with i.e. no endorsement or direct encouragement to buy, no comment about the superlative nature of the product. Given the manner in which prizes are generally described to enable the

audience to decide to enter a competition, the product placement of competition prizes is unlikely to comply with this Rule.

## **B. Sponsorship**

### **What is sponsorship?**

The AVMS Directive concerns the sponsorship of “audiovisual media services” and content that appears on such services.

Under AVMS, a programme included in an audio visual/on-demand programme service is “sponsored” if a person (the “sponsor”) other than the service provider or the producer has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

It's a very broad definition, capturing any “contribution” with a view to gaining some kind of promotional or reputational benefit.

The key distinction between sponsorship and product placement is that in product placement the reference to a product is built into the action of a piece of content, which is why the definition (see guidance under A. Product Placement) includes the word “within”. In contrast, sponsor references may be shown during (or around) a piece of content, but are not part of the plot.

### **What are the rules that apply to sponsorship?**

The key rules relating to sponsorship are as follows:

- Content and scheduling (where applicable) must not be influenced by sponsorship in a way that affects the responsibility and editorial independence of the media service provider.
- Sponsored content must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references.
- Sponsored content must be labelled as such (using the name, logo and/or any other symbol of the sponsor) at the beginning, during and/or at the end of each piece of content.
- There must be no subliminal messaging.

### **Can any brand participate in sponsorship?**

No. Sponsorship is not permitted for:

- Entities whose principal activity is the manufacture and/or sale of cigarettes and other tobacco products
- Medicine manufacturers and sellers using prescription-only product or service names for sponsorship purposes.

Can all types of content be sponsored? No. Sponsorship of news and current affairs programmes is not permitted (see the detailed guidance on Working with News and Current Affairs Partners).

In some member states children's programmes, documentaries and religious programmes cannot be sponsored.

## **C) OTHER KEY AVMS CONTENT RULES**

- Must not contain any incitement to hatred based on race, sex, religion or nationality.
- Content must not seriously impair the physical, mental or moral development of minors.

## **Appendix A: Examples of Product Placement and Sponsorship Breaches**

### **Undue Prominence**

[Super Bass Top 20](#) (Flava, 16 January 2016, 16:00) Breach of rule 9.5 - a 2 second close-up of eight bottles of MYX Fusions Moscato was shown during a music video. Did not form part of the narrative of the video, and the close-up shot of the product could not be justified editorially. Additionally, Nicki Minaj (who appears in the video) is a co-owner of the brand. Ofcom explained in more detail:

“Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure...However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots”

[The X Factor](#) (ITV1, 6 October 2012, 20:00) Although some reference to the hotel where the contestants were staying was editorially justified, the frequency with which the hotel was referred to in some of the V/Ts was not justified editorially, particularly given the number of other visual and verbal references to the hotel in the episode. Each individual reference did not amount to undue prominence, the overall cumulative effect of references was considered to be excessive

[Chart Show's Top 40 Singles Chart](#) (Chart Show TV (CSC Media), 31 August Vfb2015, 14:00) Breach of rule 9.5 - close-up 3 second shot of Beluga vodka bottle in the music video for Body on Me by Rita Ora and Chris Brown. Could not be justified editorially.

[6eren \(Discover\) - Premier League Football](#) - The Bet 365 logo was shown on 8 occasions during the Arsenal v Tottenham Hotspur game in March 2016, alongside various odds. The licensee argued that technical information can be accompanied by a brand (e.g. IBM for tennis stats). Ofcom accepted the principal, but rejected the suggested the odds were technical info, and found that the Bet365 references were unduly prominent.

### **Editorial Control**

[Iftar Amir Kay Saath](#) (Geo UK, 23 July 2013, 16:00 and 19:00) Breach of rule 9.2 (and 9.9 and 9.10). Several statements, both for products and services offered by the presenter independently of the programme as well as third parties, appeared on-screen during the programme. E.g. “Few seats left... Book soon” was decided to be akin to advertising.

### **Sponsorship**

[Sky TV - Ford's Sponsorship of EPL Super Sunday](#) - Sky Sports 1, 24 April 2016 Example of where the sponsorship credits were seen by Ofcom as too promotional in nature - i.e. the 10-20 second sponsorship messages focused primarily on images of Ford cars, rather than explaining

the sponsorship relationship. N.B. This issues was 'resolved' - so no formal breach decision. Very good example of a sponsorship that was right on the border or compliance.

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