

## **Regulation of Product Placement**

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The Communications Authority (“CA”)’s decisions on the complaint cases concerning indirect advertising and product sponsorship (commonly known as “product placement”) in free TV programmes in mid-2016 have generated widespread discussions. I note that there are misunderstandings in some quarters of the community that the CA’s regulation of product placement is too stringent and falls behind that in other places, and that our enforcement standards are inconsistent. Let me explain by drawing reference from the following findings of our research on the regulatory regimes in overseas jurisdictions.

### **Regulation Principles in line with International Standards**

The findings of our research on the regulation of product placement in free TV services in overseas jurisdictions reveal that the key principles underlying our regulatory regime are generally in line with those in major overseas jurisdictions. For example, in many places, **advertisements are required to be recognisably separate from programmes** and product placement is subject to regulation, including **the prohibition of product placement in certain types of programmes and of direct encouragement of purchase of products and services within programmes**, and the need to **preserve programme integrity and viewing pleasure**. In the United Kingdom and Korea, for instance, it is expressly provided that product placement should not undermine the editorial independence of programmes while in Taiwan, it is required that product placement should be presented naturally according to the programme content.

The above requirements are similar to those in Hong Kong which require product placement to be justified editorially, not obtrusive to viewing pleasure and not gratuitous. In other words, the regulatory regime adopted in Hong Kong is in line with international practice, rather than falling behind or being too stringent.

There are suggestions that the CA should follow overseas practice and put in place specific requirements on product placement such as stipulating the amount of broadcast time and the proportion of the screen allowed for product placement, etc. However, our research findings indicate that currently such specific rules are only adopted in Korea, while many other places, like Hong Kong, tend to adopt regulatory principles which allow more room for creativity and flexibility for TV stations.

In fact, owing to differences in culture, social values and broadcasting landscape, it is not appropriate to single out a particular element of the regulatory regime of Hong Kong for comparison with that of other places. Rules governing product placement should not be considered in isolation, but should be formulated in a holistic manner in tandem with those governing advertising breaks. For example, unlike the practice of Hong Kong, advertising breaks within certain types of programmes including dramas are not allowed in free TV services in Korea. Similarly, in the Mainland, advertising breaks are not allowed within an episode of a drama; and in Taiwan, advertising breaks are only allowed in programmes lasting for 30 minutes or more. In view of the above restrictions, product placement is commonly found in free TV programmes in those places.

### **Standards Adopted in Handling Complaint Cases**

Some are of the view that the standards adopted by the CA in handling complaints about product placement are inconsistent, subjective and

ambiguous. There are even remarks such as “it is fine to eat pizza but not fried chicken in programmes” and “discrimination against fried chicken”. I believe the public would have a fair judgement as to whether these criticisms are justified. Nevertheless, I would like to stress that the CA has all along been handling complaint cases in an objective and consistent manner, having regard to the relevant requirements and the circumstances of each case. As the specific circumstances and presentation of each case vary, it is not unusual for the CA to arrive at different decisions. In addition, the CA also takes into account the nature and severity of the breach, and the record of non-compliance of the licensee concerned when deciding what sanctions should be imposed. In fact, there are also cases of non-compliance concerning product placement in other places such as Korea and Taiwan in recent years. Regulators there likewise have imposed sanctions including warnings and financial penalties on TV stations. For example, warning and administrative guidance were issued in respect of the dramas “That Winter, The Wind Blows” and “Descendants of the Sun” respectively in Korea, and TV stations in Taiwan have been fined for breaching relevant requirements on product placement in dramas.

### **Keeping an Open Mind on the Review**

The CA respects and upholds the creative expression and editorial independence of licensees. We fully appreciate that, with the emergence of new media in recent years, free TV stations are facing intensifying competition and seeking to diversify their sources of advertising revenue. As a matter of fact, the CA has all along kept an open mind on the regulation of product placement. Nonetheless, in exercising its regulatory function, the CA has to strike a balance between protection of Hong Kong viewers’ interests and provision of a more conducive business environment for TV stations. Therefore, we are obliged to consider the views of the public and their acceptance towards product placement. In this connection, a territory-wide opinion survey was launched last month. I sincerely hope that the selected households will participate

actively in the survey and provide valuable opinions to us. Upon completion of the survey in the third quarter of 2017, we will examine the findings of the relevant research and survey and carefully consider the way forward with respect to the regulatory regime for product placement.