



Dutch Media Authority Regulation of 18 November 2014 providing rules on product placement for commercial media institutions (2014 Regulation on Product Placement for Commercial Media Institutions)

18 November 2014

The Dutch Media Authority,

Having regard to Articles 3.19b, 7.11 and 7.12 of the 2008 Media Act;

Decrees:

Article 1 Purpose

The rules this Regulation provides apply to the legal requirements as listed in the annex to this Regulation.

Article 2 Definitions

The following terms employed in this Regulation shall have the following meaning:

- a. *Act*: the 2008 Media Act;
- b. *Decree*: the 2008 Media Decree.

Article 3 Definition of Programme

1. The words '*clearly delineated*', as mentioned in the definition of '*programme*' in Article 1.1(1) of the Act shall mean: clearly different from the programme preceding it and that following it in the programming.
2. The words '*recognisable as such*', as mentioned in the definition of '*programme*' in Article 1.1(1) of the Act shall mean:
 - a. recognisable as a programme by the average audience; and
 - b. different from the programme preceding it and that following it in the programming in both content and appearance.
3. Wherever this Regulation refers to product placement related to a programme, it is to be understood as to include '*a programming component equivalent to a programme*'.

Article 4 Definition of Product Placement

The phrase '*inclusion of, or reference to, a product, service or logo within the framework of the programme*,' as referred to in the definition of product placement in Article 1.1(1) of the Act, shall mean: The mentioning or displaying of products, services or logos within the storyline of a programme in return for a financial contribution.

Article 5 Definition of Logo

The term '*logo*,' as referred to in the definition of product placement in Article 1.1(1) of the Act, shall mean: The name, drawing, printout, stamp, letters, numerals, the shape of goods or their packaging, and any other signs susceptible to graphic representation employed for the purpose of distinguishing the goods or services of the product placer.

Article 6 Definition of Light Entertainment programmes

1. The term '*light entertainment programmes*,' as referred to in Article 3.19a of the Act, are programmes of an entertaining nature, which neither educate consumers, nor provide any information on, or any analysis of, the news, current affairs or political information.
2. The term '*educating consumers*,' as referred to in the first paragraph, shall mean: Programming



aimed at objectively and impartially informing consumers about products and services offered by third parties.

3. The term '*news or current affairs*,' as referred to in the first paragraph, shall mean: Programming that is frequently aired - at least once a week - and reports on events no less than seven days old.
4. The term '*political information*,' as referred to in the first paragraph, shall mean: Programming reporting on politicians, (the points of view of) political parties and the political decision-making process.

Article 7 Medical Treatment

The term '*medical treatment*,' as referred to in Article 3.19b(3)(a) of the Act shall mean: Treatment provided pursuant to an agreement for the provision of medical treatment as referred to in Article 7:446 of the Dutch Civil Code.

Article 8 Contribution of Subordinate Importance

The term '*product placement*,' as referred to in Article 1.1(1) of the Act, does not include: The provision of a non-financial contribution that is not, or not identifiably, displayed or mentioned in the programme and:

- a. was given on loan by a third party; or,
- b. the value of which in relation to the total cost of the production or purchase of the programme is of subordinate importance, and in any case not higher than EUR 1,000 per contribution for television; and EUR 200 per contribution for radio.

Article 9 Notice of Product Placement to Inform the Audience

1. The notice referred to in Article 3.19b(4) of the Act, is to be made by adding the following text: "Dit programma bevat productplaatsing" (*This product contains product placement*). If the party placing the product is also a sponsor, said notice must be displayed at the same time as the sponsorship notification.
2. The notice, referred to in the first paragraph, shall be clearly legible and/or clearly audible.

Article 10 Products or Services within Programmes Containing Product Placement

1. The audience is considered to be directly encouraged by means of specific promotion into the buying or renting of products, or into the retainment of services, as referred to in Article 3.19b(2)(a) of the Act, if said products or services are placed in a promotional context using subjective positive qualifications.
2. Said products or services are in any event deemed as receiving excessive attention in the manner referred to in Article 3.19b(2)(b) of the Act, if they are placed in a promotional context, either frequently, or for long periods of time.
3. The depiction or mentioning of products or services may not be built into the programme's storyline in a manner that is considered unnatural.

Article 11 Final Provision

1. This Regulation shall be made public by its publication both in the Government Gazette and on the Dutch Media Authority's website (www.cvdm.nl).
2. This Regulation shall be referred to as the 2014 Regulation on Product Placement for Commercial Media Institutions.
3. This Regulation shall enter into force two months after the date of its publication in the Government Gazette.

*Dutch Media Authority,
M. de Cock Buning,
President*

*E. Eljon,
Commissioner*



ANNEX TO THE 2013 REGULATION ON PRODUCT PLACEMENT FOR COMMERCIAL MEDIA INSTITUTIONS

Article 1.1(1) of the 2008 Media Act

The following terms used in this Act, and the legal provisions based upon it, shall have the following meaning:

surreptitious advertising: The mentioning or displaying of names, brands, logos, products, services or activities of persons, companies or institutions in manners other than pursuant to this Act, under the proviso that such mentioning or displaying may be reasonably assumed as done with the objective, or joint objective, of advertising, which objective will in any event be deemed present if such mentioning or displaying is done in return for financial or similar remuneration;

programme: An electronic product consisting of audio or visual content that is clearly delineated, recognisable as such, and disseminated by a broadcasting service under an individual title;

product placement: The inclusion of, or reference to, a product, service or logo within the framework of a programme, or a programming component equivalent to a programme.

Article 3.19a of the 2008 Media Act

1. Any programming produced after 19 December 2009 is to remain free of product placement.
2. Unless the programming in question is specifically intended for children under the age of twelve, the first paragraph shall not apply to programming consisting of:
 - a. films;
 - b. series;
 - c. sports programmes; and
 - d. light entertainment programmes.

Article 3.19d of the 2008 Media Act

1. Product placement may only appear if the editorial independence of the employees entrusted with the provision and composition of the product placement-related programming is safeguarded by provisions to that effect in the Editorial Statute, as mentioned in Article 3.5(2).
2. Product placement within programming should be designed in such a way that:
 - a. the audience is not encouraged to buy or rent products or to retain services by means of specific promotions; and
 - b. the product in question does not receive any excessive attention.
3. Product placement is not allowed for:
 - a. medical treatments; or
 - b. alcoholic beverages between the hours of 6 am and 9 pm.
4. Any programming that contains product placement, will, for the purposes of informing the audience, clearly indicate that it contains product placement. Notice thereof will be given in an appropriate manner at the beginning and at the end of the programme, as well as at the beginning or end of any advertising announcements within the programme.
5. The Authority reserves the right to set more detailed rules on the application of product placement in programming. Such rules will need to be approved by the Minister.

Article 3.29d of the 2008 Media Act

With the exception of Articles 3.16(4) and 3.19b(3)(b), the Articles 3.5, 3.5a, 3.6, 3.7(2) opening clause and (a), 3.15 – 3.19c and 3.26 shall equally apply to on-demand commercial media services.

Article 7:446 of the Dutch Civil Code

1. The agreement for the provision of medical treatment - hereinafter in this section referred to as the medical treatment agreement – is the agreement under which a person, or legal person, i.e. the care provider, in the course of the performance of his medical profession, or medical business commits himself to performing medical actions which directly affect the principal personally, or a specific third party. The person who is directly affected by the medical actions is hereinafter referred to as the 'patient'.
2. 'Medical actions' are to be understood as:
 - a. all actions – including examinations and the provision of medical advice – directly affecting any person and aimed at curing that person of an illness, preventing that person



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- from contracting an illness, or assessing the state of that person's health, and/or offering said person obstetrical assistance;
- b. actions other than those referred to under (a) which directly affect a person and which are carried out by a physician or dentist acting in a professional capacity.
 3. The actions referred to in paragraph 1 shall also include, the nursing and care of the patient in the context of said treatment, and the provision - for the direct benefit of that patient - of the material circumstances in which such treatment may be administered.
 4. No treatment agreement will be deemed to exist, if pertaining to actions performed for the purposes of assessing a person's medical condition or medical support that are performed at the request of a person other than the person being assessed, and performed for the purposes of the determination, or award of claims or obligations, admission to an insurance scheme, or admission to a facility, or educational programme, for an employment aptitude test, or for the performance of certain professional duties or services.



EXPLANATORY MEMORANDUM

General

1. The entry into force of the Dutch Media Act 2008 on 1 January 2009, and the implementation of the Audiovisual Media Services Directive (hereinafter: AMS Directive) into the Dutch Media Act 2008, effective 19 December 2009, has seen product placement by commercial media services become allowed.
2. The amended legislation is the reason for the drafting of this Regulation which is aimed at offering a better understanding of how the Authority will be applying the amended legislation in practice.

On-Demand Media Services

3. The implementation of the AMS Directive has brought on-demand audiovisual media services within the scope of the 2008 Media Act. These rules pertain to the programming or any equivalent media content. The structure of the Media Act reserves the term *programme* and with it, also, the term *programming*, for broadcasting services and therefore linear media content. *Non-linear media content*, i.e. on-demand media services, do not offer *programmes*, but equivalent media content components. These rules consequently also apply to on-demand media services via, e.g., the internet. Such media content will, in practice, consist of a video: an electronic product displaying moving visual content in such a way that the content shown is coherent, recognisable as such, and disseminated by an on-demand media service under an individual title. Refer to the *2011 Policy rules on the classification of on-demand commercial media services* to find out which entities are considered on-demand media services under the 2008 Media Act.

Sponsorship - Product Placement Ratio

4. The distinction between product placement and sponsoring requires further clarification. The Authority explicitly refers to consideration 91 of the AMS Directive (Directive 2010/13/EU) in this regard. This consideration points out that the decisive criterion distinguishing sponsorship from product placement is the fact that in product placement the reference to a product is built into the action of a programme, which is why the definition in point (m) of Article 1(1) of the AMS Directive contains the word 'within'. In product placement, the depiction of, or reference to, a product is built into the programme's storyline (action). This has, for example, led these products or services to be brought to the attention of the audience by them being mentioned, discussed, or actively used during the programme.
5. Though a sponsor's products may be shown during a programme, they are not embedded into the programme's action (storyline).
6. Another important difference between sponsorship and product placement is the fact that any (potential) financial contribution paid by the sponsor is generally intended as a contribution to the programme, not as a direct compensation for the depiction of, or reference to, products or services, as is the case in product placement. In conclusion, product placement will be deemed to exist once the following two cumulative conditions are met:
 - the mentioning, displaying or other use of products, services or logos is done in return for a financial contribution;
 - this is embedded into the storyline of a programme.

Prohibition of Surreptitious Advertising

7. Product placement aimed at the promotion of a product, service or logo, is not allowed. Such would be tantamount to (illegal) surreptitious advertising.
Such may be the case if specific promotions directly encourage the audience into the buying, or renting, of products, or into the retainment of services, or if excessive attention is directed to the products or services in question, or if the embedding of those products or services into a programme's storyline is done in an unnatural manner.
8. Article 3.19b(5) of the Act, authorises the Dutch Media Authority to issue mandatory provisions on product placement.
In respect of sponsorship, the Dutch Media Authority may only issue policy rules. It did so in adopting the 2012 Policy rules on sponsorship for commercial media institutions. Although product placement is regarded as a form of sponsorship, the Dutch Media Authority nevertheless elected to issue separate rules on product placement pursuant to its aforementioned legislative power to that effect.
This has found some overlap between the definitions and articles of both legislative instruments to have been unavoidable.



Explanatory Notes by Article

Article 2 (Definitions)

9. The terms employed in these policy rules and also featuring in the 2008 Media Act, have the same meaning as defined in Article 1.1 of said Act. Any terms employed in these policy rules and not defined in Article 1.1 of the Act, can be found defined in Article 2 of these policy rules.

Article 3 (Definition of Programme)

10. Article 1.1(1) of the Act defines *programme* as: an electronic product consisting of audio or visual content that is clearly delineated and recognisable as such. The two criteria listed, i.e. '*clearly delineated*' and '*recognisable as such*', are explained in more detail in Article 3 of this Regulation.
11. The *clearly delineated* criterion demands that the programme is clearly separated from the rest of the programming at its beginning and end, irrespective of any commercial breaks as referred to in Articles 3.10 and 3.11 of the Act. Article 3.13 of the Act provides the rules for interrupting the coverage of an event or play.
12. The *recognisable as such* criterion pertains to the programme's content and format. This concerns elements such as the subject of the programme and how it is presented.
13. In sports events coverage, the pre-match build-up, the match itself, and the post-game analysis are deemed different programmes.
14. In accordance with its definition as provided in Article 1.1(1) of the Act, the rules governing *product placement* apply to '*a programming component equivalent to a programme*' in equal measure. See also these explanatory notes at 3.

Article 4 (Definition of Product Placement)

15. As already mentioned in the explanatory notes, the difference between the mentioning of, or reference to, a product, service or logo in the context of sponsorship - as had already been allowed prior to the implementation of the AMS Directive - and in the context of product placement, is that the latter sees the product, service or logo embedded into the programme's storyline. This is evidenced by consideration 91 of the AMS Directive (Directive 2010/13/EU) Because product placement sees the products or services interwoven with the programme's storyline, this will also generally see them awarded a more prominent place within that programme, compared to products displayed or mentioned in a sponsorship context. Product placement will, for example, usually see the products or services mentioned, discussed or actively used in the programme. The decision to embed the product or service into the storyline by displaying or mentioning them lies with the media institution in question, which may decide to do so while enjoying full editorial independence of both the party placing the product, or any other commercial third parties.
16. The prevention of surreptitious advertising requires the product or service to be embedded into the storyline (action) of the programme in a natural manner. Any determination as to whether this requirement was observed will have to take into account the context of the expression and the formula and structure of the programme.
17. The considerations to the AMS Directive make it absolutely clear that product placement may not be employed if that would influence the programme's content in such a way that it affects the responsibility and editorial independence of the media service provider. An example of this is what is called *theme placement*. Theme placement sees a third party pay for the production of a storyline intending for it to act as a platform for the products, services or logos of that third party. Theme placement sees a programme or series of episodes fully devoted to a product, product category, company, or industry and fails to guarantee the independent responsibility and editorial independence of the media service provider.

Article 6 (Light Entertainment Programmes)

18. The concept of light entertainment programmes has a broad scope and includes many types of programmes. Programmes that contain consumer education, however, are not considered light entertainment programmes and are therefore prohibited from employing any product placement. This is because central to any information provided to consumers about any products, services, companies, etc. is that it should remain objective and independent and that any risk of commercial influencing is avoided. Entertainment programmes are free to discuss the news, current affairs or political information. Such programmes may be deemed light entertainment programmes and may therefore also employ product placement, provided that their main objective remains to entertain. This could, for example, take the form



of a current affairs quiz show. Product placement will not be allowed once the programme is deemed to inform the viewer about, or offer him analysis of, the news, current affairs, or political information, as that would see it potentially influence his opinion. The second, third and fourth paragraphs of this Article list what is to be understood as constituting consumer education, news or current affairs, and political information. News, for example, also includes theme programmes that are disseminated in reaction to a natural disaster.

19. The second, third and fourth paragraphs of this Article aim to rule out any risk of commercial influence of such programming by product placement.
20. Commercial influence of current reporting on sports and culture is not expected. Programmes reporting on these topics may employ product placement.

Article 7 (Medical Treatment)

21. The Authority understands the term medical treatment as to equate to treatment provided pursuant to an agreement for the provision of medical treatment as referred to in Article 7:446 of the Dutch Civil Code. The Article provides that an agreement of medical treatment is one under which a person, or legal person, i.e. the care provider, in the course of the performance of his medical profession, or medical business commits himself to performing medical actions which directly affect the principal personally, or a specific third party.

Article 8 (Contribution of Subordinate Importance)

22. The Authority does not consider unidentifiable contributions that are of subordinate importance in relation to the total cost of the programme, or series of programmes, or which have been given on loan, to constitute product placement. Unidentifiable contributions are contributions which are neither depicted, nor mentioned in the programme or which are depicted, or mentioned, in such a way that they cannot be traced to their contributor within the programme in question.
23. Examples of unidentifiable contributions that tend to be of subordinate importance in relation to the total cost of the programme, or series of programmes, are items such as the attire of its presenters, the programme's catering, its flower arrangements, or other minor decorations/props. The article has included a measure further specifying the level of subordination, capping it at a maximum amount of EUR 1,000 per contribution. One fifth of this sum, or EUR 200 per contribution, is taken when applying to radio programmes. These caps are set per product and per programme (episode). If indeed prizes of a significant value are given away during a programme, then that would be considered tantamount to product placement.
24. Financial contributions, regardless of their size, are never deemed of subordinate importance.
25. No cap is put on the value of products or other contributions given to a programme on loan. But again, the contribution to the programme may not be identifiable to the audience, otherwise it could be considered tantamount to product placement.
26. Rules on how to make mention of the party making a contribution of subordinate importance can be found in Article 7(2) of the 2012 Policy rules on sponsoring for commercial media institutions.

Article 9 (Notice of Product Placement to Inform the Audience)

27. Article 3.19b(4) of the Media Act requires the programming to include a notice of product placement. Notice thereof will be given in an appropriate manner at the beginning and at the end of the programme, as well as at the beginning or end of any advertising announcements within the programme.
28. Said notice must be of a neutral nature and needn't exceed the phrase: "Dit programma bevat productplaatsing" (*This programme contains product placement*). If the party placing the product is also the programme's sponsor, said notice of product placement should be displayed at the same time as the sponsorship notice.
29. Paragraph 2 was included to avoid the notice from being displayed too briefly, or in a format that is insufficiently visible, or audible, to the audience. The audience should at all times be properly informed about the nature of the depiction or the mentioning of products. If not, surreptitious advertising will be deemed to have been employed.

Article 10 (Products or Services within Programmes Containing Product Placement)

30. Any depiction, or mentioning, of products and services within a programme by way of product placement should never see specific promotions directly encourage the audience into the buying, or renting, of any products, or into the retainment of any services. Such would, of course, be tantamount to illegal surreptitious advertising. The prohibition of specific promotions directly encouraging the audience



into the buying, or renting, of products, or into the retainment of services, does not preclude the mentioning of the positive characteristics of any product or service. A statement made during a DIY programme claiming that a particular type of parquet flooring supposedly has a lifespan of at least 30 years, is, in principle, allowed. Consequently stating that that means that such a floor will last a long time, would therefore also be allowed. The presenter subsequently adding that one would be foolish not to purchase such flooring, or that the flooring in question is currently available at a discount, would not be allowed, as these are specific promotional references encouraging viewers into buying the parquet flooring in question.

31. The depiction, or mentioning, of products and services within a programme by way of product placement may not receive any excessive attention, as that would also be deemed tantamount to unauthorised surreptitious advertising. Such will certainly be deemed to have been employed in the following situations:
 1. *the provision of commercial information*, evidenced by the depiction or mentioning of:
 - products/service prices;
 - points of sale etc.;
 2. a call to action;
 3. a too explicit, or too extensive depiction or mentioning, which is the case when:
 - notices or depictions of products, services or logos are disseminated that are too explicit;
 - notices or depictions of products or services are disseminated that are too lengthy, or shown excessively frequently;
 - a product or service is excessively being zoomed in on, or zoomed out of;
 - products or services are displayed on full screen;
 - insufficient distinction is made between the programme and an (authorised) advertisement;
 4. the use of promotional materials of the party placing the product.
32. It follows from the above that mentioning a product's positive characteristics will be permitted, provided that this is done in a manner that is neither too long nor too frequent. Setting a quantitative cap in that respect is not easily done, but will have to be assessed on the basis of the specific circumstances of the case, which will also have to take into account the context of the expression and the formula and structure of the programme.
33. Programmes are also prohibited from depicting or mentioning the party or parties which have made the products or services (e.g. prizes) available. This is applicable to phrases such as: "Deze prijs wordt u aangeboden door ..." (*This prize was offered by ...*). Mentioning the brand of a prize made available by a sponsor is allowed, as long this is done in a neutral manner, e.g.: "U wint een Philips-televisie" (*You've won a Philips television set*). Suppose that a service, as opposed to a product is given away, let's say a holiday, for example, mentioning the name of the company providing that service, will be permitted, as long as this is done in a neutral manner, e.g.: "U wint een Neckermann-reis naar Aruba" (*You've won a Neckermann trip to Aruba*).
34. Finally, and as also mentioned in the foregoing, surreptitious advertising may also be deemed to have been employed if the product or service is embedded into the storyline (action) of the programme in an unnatural manner. Any determination to that effect will have to take into account the context of the expression and the formula and structure of the programme.