

## 2022 Commercial Media Institutions Product Placement Policy Rule

### **Chapter 1. General**

#### **Article 1. Scope**

This policy rule will apply to the media content of commercial media institutions within the meaning of the [2008 Media Act](#), including on-demand commercial media services (such as VOD services and video uploaders).

#### **Article 2. Definitions**

The following terms as used in this policy rule will have the following meanings:

- *Act*: the [2008 Media Act](#);
- *media content*: programme content (television and radio) and on-demand audiovisual media content (VOD services and video);
- *video*: on-demand audiovisual media content that has been created by a user and has been uploaded by such user or another user to a video platform.

#### **Article 3. Definition of medical treatments**

1. The media content must not contain any product placement for medical treatments ([Article 3.19b\(3\)\(a\) of the Act](#)).
2. The term *medical treatments* as used here will be understood as: treatments available only on prescription.

#### **Article 4. Prohibition on product placement**

1. Media content consisting of news, current affairs or consumer affairs, media content of an ecclesiastical or spiritual nature, and media content particularly intended for children below the age of 12 must not contain any product placement ([Article 3.19a of the Act](#)).
2. Media content consisting of *news* will be understood as: media content consisting of delivering news facts, possibly with a limited explanation, and (live) reports of newsworthy events.
3. Media content consisting of *current affairs* will be understood as: media content consisting of further exploring in depth, explaining and placing in context of topical news facts.
4. Media content consisting of news and current affairs will in any event not be understood to include:
  - media content consisting of a weather report;
  - media content consisting of traffic information.
5. Media content consisting of *consumer affairs* will be understood as: media content the purpose of which is to provide consumers with objective and impartial information on third-party products and services.
6. Media content of an *ecclesiastical or spiritual nature* will be understood as: media content from churches or societies on a spiritual nature, centred around philosophical deepening and distributing the message characteristic of the relevant movement.

7. Media content *particularly intended for children below the age of 12* will be understood as: media content which, by its substance or nature or otherwise is intended for children below the age of 12.

## **Chapter 2. Scope of the term product placement**

### **Article 5. Explanation of the definition of product placement**

1. The definition of the term product placement provides that a product, service or (figurative) mark must be included or referred to within the framework of the programme ([Article 1.1\(1\) of the Act](#)). The following terms as used herein will have the following meanings:
  - a. *within the framework of the programme*: the display or mention of a product, service or (figurative) mark within the storyline of the media content;
  - b. *(figurative) mark*: any names, drawings, letters, digits, shapes of goods or of packaging and all such other signs that are capable of graphic depiction as may serve to distinguish the user thereof from other parties.

### **Article 6. Loan for use or contribution of minor significance**

1. **1**The definition of product placement states that it involves the provision of payment or a similar consideration ([Article 1.1\(1\) of the Act](#)).
2. **2**A similar consideration will not be understood to include any contribution that is not, or not identifiably, displayed or mentioned and:
  - a. that has been given on loan for use by a third party; or
  - b. the value of which in proportion to the total cost of realisation or acquisition of the media content is of minor significance, but in any event does not exceed an amount of EUR 1,000 per television programme or EUR 200 per radio programme.
3. The name of the party providing a contribution as referred to in paragraph 2 will only be mentioned or displayed:
  - a. in a neutral fashion at the beginning or at the end of the media content; and
  - b. combined with no more than the words '*with thanks to*'.
4. This article will not apply to any contributions provided for purposes of creating videos.

## **Chapter 3. Reference to product placement**

### **Article 7. Appropriate reference**

1. Media content containing product placement will include an appropriate, clearly legible or audible reference, at the beginning and at the end, indicating that the media content contains product placement ([Article 3.19b\(4\) of the Act](#)). This obligation will in any event be deemed to have been complied with if this reference uses one of the following texts:
  - a. *this programme contains product placement*; or
  - b. *this video contains product placement*;

provided that, in the case of videos, this reference is also included in the related description.

#### **Article 8. Promotional context and inclusion in the storyline**

1. Product placement will be shaped such that the public will not be directly encouraged, through specific promotions, to purchase or rent products or services ([Article 3.19b\(2\)\(a\) of the Act](#)). Encouragement to purchase or rent will be deemed to exist if products or services are placed in a promotional context with subjectively positive qualifications.
2. The relevant products cannot be given undue attention ([Article 3.19b\(2\)\(b\) of the Act](#)). Undue attention will be deemed to exist if the products, as a result of the long-term or frequent promotion thereof, are placed in a promotional context.
3. The display or mention of the products or services may not be unnaturally embedded in the storyline.

#### **Chapter 4. Final provisions**

#### **Article 9. Short title and effective date**

1. This policy rule will be referred to as the 2022 Commercial Media Institutions Product Placement Policy Rule.
2. The [2014 Commercial Media Institutions Product Placement Regulation](#) will be repealed.
3. This policy rule will be made public by its publication in the Government Gazette and on the Dutch Media Authority website ([www.cvdm.nl](http://www.cvdm.nl)).
4. This policy rule will come into effect on the day following its publication in the Government Gazette.

#### **EXPLANATORY NOTES TO THE 2022 COMMERCIAL MEDIA INSTITUTIONS PRODUCT PLACEMENT POLICY RULE**

##### **1. General**

This policy rule applies to product placement in the media content of commercial media institutions. Media content is understood to include both programmes on television and radio and the offering of video on demand (VOD) services and videos that are uploaded on video platforms such as YouTube, Instagram and TikTok. In these explanatory notes, we will explain the rationale behind this policy rule, what is meant by product placement, how it differs from advertising messages and sponsoring, and who are governed by this policy rule. The article-by-article explanatory notes will explain the purpose and purport of the articles in this policy rule.

##### *Amendments*

On 1 November 2020, the 2008 Media Act was amended in view of the implementation of the European Audiovisual Media Services Directive 2018/1808/EU of 14 November 2018 amending Directive 2010/13/EU. The amendment of the law has led to the adoption of the 2022 Commercial Media Institutions product placement Policy Rule.

This amendment of the law has aligned the regulations for providers of on-demand media services with the regulations for providers of broadcasting services (television and radio) where possible. Another important effect of the amendment to the Act is that 'video uploaders' which upload videos to video platforms may now become subject to regulation by the Authority. This will be the case if

they meet the criteria as set forth in (the decision tree in) the 2022 Qualification of On-Demand Commercial Media Services Policy Rule. Video uploaders that meet these criteria will be subject to the same rules as set for other on-demand commercial media services.

#### *Rationale behind the rules*

The starting point for commercial media institutions is that, in principle, product placement is permitted. If the media content contains product placement, however, several rules will apply pursuant to the Act. These rules ensure that the public is informed when there is product placement and, thus, commercial influencing. This is intended only to inform the public, so that it may not lead to an advertising message in disguise.

If a reference to product placement is not in compliance with the rules of the Act and this policy rule, it constitutes prohibited surreptitious advertising. Such a violation may lead to sanctions imposed by the Authority, such as a warning or a fine.

#### *What is product placement?*

Product placement is the situation where a product or service is mentioned or used in the media content by naturally embedding it in the storyline. Product placement always takes place against payment (either in cash or by way of a similar consideration, such as a free car). The product or services is shown, for example by mentioning it, discussing it or actively using it. This can also be in a positive way. The products or services must, however, not receive any undue attention, nor must the public be encouraged to purchase them. A promotional context is, therefore, not permitted.

Media content consisting of news, current affairs or consumer affairs, media content of an ecclesiastical or spiritual nature, and media content particularly intended for children below the age of 12 must not contain any product placement. This applies both to radio and television programmes and to on-demand audiovisual media content (Articles 3.19a(1) and 3.29d of the Act).

#### *Difference with sponsoring and advertising messages*

In essence, product placement differs from advertising messages or product placement.

Sponsoring is particularly the situation where a third party provides a contribution to the commercial media institution. That contribution may either be financial or consist of products or services. The idea behind this is that the relevant third party contributes to the realisation of the media content. Just as with product placement, the products of the sponsor may be displayed in the media content, but the public must not be encouraged to purchase any products or services. An important difference, however, is that, with sponsoring, the products are not embedded in the story line. That means that the arrangements on the use of a product in product placement are more far-reaching.

Advertising messages are communications unmistakably intended to encourage the public to purchase a certain product or service. These may also be communications that are intended to build goodwill among the public in respect of a certain trademark or business, for purposes of encouraging the public to purchase products or services. This is not the case with product placement, for it must not encourage the public to purchase products or services. A promotional context is, more therefore, not permitted where product placement is concerned. Moreover, in product placement, the products or services must appear naturally in the story line.

This policy rule applies to product placement only. The 2022 Commercial Media Institutions Advertising Policy Rule and the 2022 Commercial Media Institutions Sponsoring Policy Rule elaborate further on the rules in respect of advertising messages and sponsoring.

### *Who are governed by this policy rule?*

This policy rule applies to all commercial media institutions within the meaning of the Act. These include the classic broadcasting services (radio and television programme channels) and online streaming services (VOD services). Individual video uploaders which post videos on third-party platforms (such as YouTube and Instagram) may be governed by this policy rule. This will be the case if the video uploader qualifies as an 'on-demand commercial media institution'. The criteria currently used by the Authority in its regulatory framework are as set forth in the 2022 Qualification of On-Demand Commercial Media Services Policy Rule.

This policy rule only discusses the rules for on-demand media content on radio and television programme channels and on-demand audiovisual media content. These are not applicable to on-demand commercial audio services (such as podcasts). Those audio services have not been brought under the scope of the Act and are, thus, also beyond the scope of this policy rule (Article 3.29a of the Act). Such audio services may, however, be subject to different regulations, such as the consumer protection regulations, which come under the supervision of the Netherlands Authority for Consumers and Markets. The Dutch Advertising Code (of Stichting Reclame Code) also contains provisions relating to this type of media content.

## **2. Article-by-article explanatory notes**

### ***Chapter 1. General***

#### *Article 1 (Scope)*

This policy rule applies to media content of commercial media institutions within the meaning of the Act. These include both the broadcasting services (television and radio) and the on-demand commercial media services, such as VOD services and video uploaders (to the extent satisfying the criteria of the 2022 Qualification of On-Demand Commercial Media Services Policy Rule).

#### *Article 2 (Definitions)*

The terms as used in this policy rule have the same meanings as in Article 1.1 of the Act. To the extent that any terms are used in this policy rule that are not described in the Act, those terms are defined in this article.

#### *Article 3 (Medical treatments)*

Article 9(1)(f) of the European Audiovisual Media Services Directive 2010/13/EU prohibits advertising of medicinal products and medical treatments available only on prescription. The existing Articles 2.94, 3.7 and 3.19b of the Act only refer to the term medical treatment. This term is not explained in further detail. Before the Act was adjusted to the aforesaid directive, the Act contained a prohibition on advertising of medical treatments available on prescription. This addition was deleted with the adjustment of the Act. It does, however, not seem to have been a deliberate choice on the part of the legislator to define the term medical treatment differently.

Parliamentary history shows that, in the debate on the legislative proposal in 2009, the basic principle used was that, unless expressly stated otherwise by the legislator, conversion of the minimum requirements of the directive was intended. The explanatory memorandum to the adjustment of the Act did not mention anything about the medical treatment. Therefore, it seems likely that the legislator intended to maintain the same definition. The Authority has chosen to link up with the definition in the directive and to understand any reference to *medical treatments* to refer to treatments available on prescription.

The Act has declared the prohibition on product placement for medical treatments applicable to on-demand commercial media services (VOD services and video) as well.

#### *Article 4 (Prohibition on product placement)*

Media content consisting of news, current affairs or consumer affairs, media content of an ecclesiastical or spiritual nature, and media content particularly intended for children below the age of 12 must not contain any product placement (Articles 3.19a(1) and 3.29d of the Act). With this prohibition, the legislator intends to rule out any risk of commercial influencing of this type of (editorial) content. This article explains what is understood by these terms.

Commercial influencing of a weather report or traffic information would not be obvious. Therefore, the weather report and the traffic information may contain product placement on the condition that it is separate media content (i.e. not an item within the aforesaid media content where product placement is not permitted).

#### *Consumer affairs*

Where consumers are objectively and impartially informed about third-party products and services, this qualifies as consumer affairs. In this type of media content, product placement is not permitted. The idea behind this is to avoid any appearance of subjectivity and partiality, for example in product comparisons.

#### *Media content particularly intended for children below the age of 12*

Media content particularly intended for children below the age of 12 may not contain product placement. The idea behind this is that young children should be shielded from commercial influencing through product placement. For this group, it is still difficult to judge whether media content is commercial influencing or editorial in nature.

It is up to the media institution to assess what media content (for each programme and video) is particularly intended for children below the age of 12. In this respect, the substance of the media content may be relevant, as well as the channel through which it is distributed (for example YouTube Kids). The product or service included in the media content by way of product placement itself may be an indicator as well. After all, the media content will often have aspects in common with the relevant product or service, because a condition for product placement is that it must fit the story line.

### **Chapter 2. Scope of the term product placement**

#### *Article 5 (Definition of product placement)*

Product placement is the inclusion of or reference to a product, service or (figurative) mark within the framework of the media content for payment or a similar fee. 'Within the framework' means that a product or service is naturally embedded in the story line, for example by mentioning it, discussing it or actively using it in the media content. In this respect, the term 'story line' must be broadly interpreted and is not limited to pre-scripted content. For example, videos the content of which is not entirely established in advance (such as improvised content) will still have a story line.

Although the definition of product placement in the Act only refers to 'programme' (television and radio), this definition also applies to on-demand audiovisual media content (Article 3.29d of the Act). This has been solved by referring to 'media content' under a.

The term '(figurative) mark' is explained under b.

### *Article 6 (Loan for use or contribution of minor significance)*

This article sets the lower limit for product placement. Any contribution below that limit does not constitute product placement within the meaning of the Act, which means (*inter alia*) that no reference to product placement is needed. The idea behind this is that such a contribution is limited in scope and that the media content would have been realised even without that contribution.

It follows from the definition of product placement that there must be a payment or similar fee. There is no lower limit for payment; if the product placement takes place for payment, those rules will always apply. This is different for 'similar fees'. Similar fees may be products on loan for use, or products or services of minor significance. This type of (non-financial) contributions are not always subject to the rules on product placement.

#### *Contributions of minor significance*

These are products or services the value of which is of minor significance in proportion to the total cost of the media content. This will be reviewed for each private individual or other institution. That value must be determined for each individual case in relation to the total budget, calculated for each individual episode. For television and radio, this value may in any event not exceed EUR 1,000 per television programme and EUR 200 per radio programme. A contribution of minor significance may not be subject to the product placement rules. This will be the case if the condition that the contribution is non-identifiable is also satisfied.

#### *Non-identifiable contribution*

Neither in the case of a loan for use nor in the case of a contribution of minor significance may the contribution be displayed (in an identifiable fashion). Therefore, the contribution may not identify its provider.

### **Paragraph 3**

The reference to the party that has provided the contribution may not contain more than the words 'with thanks to' followed by the name of the provider. If necessary in order to identify the provider, the main activity or the place of establishment may be added to the name (for example where the contribution originates from a branch of a company with more than one branches). The reference may only be displayed or mentioned at the beginning or at the end of the media content. This means that a reference will, for example, be made in the opening or closing credits to the programme or video. Therefore, the mere mention in the description of a video is not sufficient. In addition, the name of the provider of the contribution must be displayed in a neutral fashion.

Although this is not a product placement reference within the meaning of the Act, this intends to improve the provision of information to the public. The public must be able to distinguish between third parties that have provided a contribution as referred to in paragraph 1 and (*inter alia*) the sponsors, so that the reference must be different.

### **Paragraph 4**

Product placement in videos is not subject to the aforesaid lower limit. This means that, if product placement takes place in a video, all the rules for product placement will apply. The rationale behind this is that, unlike for television and radio programmes, no objectively determinable lower limit can be set for videos (given the nature thereof and variation therein).

### **Chapter 3. Reference to product placement**

### *Article 7 (Appropriate reference)*

The public must be appropriately informed that the media content contains product placement. Article 7 of this policy rule provides that the reference must be clearly legible or audible, in order to avoid that the reference is so short or displayed in such a layout that it cannot properly be observed. Furthermore, this article provides for the conditions under which the reference is in any event clear. This is the case if the text as stated in this article is used, and for videos if the description of the video also states that it contains product placement. Incidentally, the *description of the video* is also understood to include the caption or any other text that can be retrieved at any time and that is directly connected with the video (i.e. not on the channel or elsewhere on the website). The reference is to be made at the beginning or at the end of the media content, and at the beginning or at the end of the advertising messages included therein.

For some video platform services (such as YouTube and Instagram), the video uploader may indicate that the video contains some form of advertising. The platform will then place its own notice under the video. If such a notice includes the words as stated in this article, the reference will, in principle, be sufficiently clear. In a concrete situation, however, the Authority may decide that a certain notice of a video platform service constitutes an insufficient product placement reference. For example because it is not clear enough or is not displayed for long enough. In such event, the specific notice will not suffice for the reference as referred to in this article.

The list in this article is not exhaustive. The Authority may also decide that another way of including the product placement reference is clear. This may be the case where it is not possible to include a description in the on-demand media content. It will, in the first instance, be up to the provider of the on-demand commercial media service to make a general and clear reference to the effect that the media content contains product placement (also given the terms used, the audience, the placement, duration, context, etc.).

### *Article 8 (No specific promotions or undue attention)*

#### **Paragraphs 1 and 2**

In the event of product placement, products or services are displayed, or referred to, in the media content. This can also be in a positive way. The public must, however, not be directly encouraged to purchase those products or services by means of specific promotions, nor must those products or services receive any undue attention (Article 3.19b(2) of the Act). The products and services may, therefore, not be placed in a promotional context. The reason is that, otherwise, the product placement would turn into an advertising message in disguise, so that it would qualify as surreptitious advertising.

A promotional context will in any event be deemed to exist in the following situations:

- 1. providing *sales information*, as becomes evident, *inter alia*, from the displaying or mentioning of:
  - – prices of products/services;
  - – sales outlets, etc.;
- 2. a call to purchase the products or services;
- 3. too prominent mentioning/displaying of products/services. This is the case where:



- – too prominent mentions/displays of products, services or (figurative) marks are broadcast;
  - – long or frequent descriptions/mentions/displays of products or services are broadcast;
  - – a product or service is excessively zoomed in or out on;
  - – products or services are displayed full-screen;
  - – an insufficient distinction is made between the programme and a (permitted) advertising message;
- 4.the use of publicity material from the party providing the product or service.

The Authority may decide in other situations, too, that there is a promotional context. In this respect, it is difficult to define a clear upper limit, but this will have to be assessed on the basis of the specific circumstances.

### **Paragraph 3**

Products and services must not be unnaturally embedded in the story line. In this respect, the term 'story line' must be broadly interpreted and is not limited to pre-scripted content. For example, videos the content of which is not entirely established in advance (such as improvised content) will still have a story line. Whether the inclusion of a product is, or is not, unnatural will depend on the circumstances.

## **Chapter 4. Final provisions**

### *Article 9 (Short title and effective date)*

The 2014 Commercial Media product placement Policy Rule is repealed and superseded by the 2022 Commercial Media Institutions Placement Regulation Rule.

In addition to this policy rule, the 2012 Commercial Media Institutions Sponsoring Policy Rule and the 2012 Commercial Media Institutions Advertising Policy Rule have been revised. These revised policy rules will be referred to as the 2022 Commercial Media Institutions Sponsoring Policy Rule and the 2022 Commercial Media Institutions Product Advertising Policy Rule. The three aforesaid policy rules will all be simultaneously published in the Government Gazette and will take effect at the same time.