[GB] Fox News breaches Ofcom Code by failing to ensure sufficient distinction between advertising and editorial content

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On 6 March 2017, Ofcom determined that Fox News, a USA news channel and broadcast as a digital satellite channel, had breached Rules 9.4 and 9.5 of Ofcom's Broadcasting Code by allowing advertising material or promotional material to be screened as if editorial content. During its Hannity show on 5 and 6 August 2016, Fox News broadcast short segments each lasting about two minutes entitled Fox Extra. These segments covered various subjects including cooking, health, technology, and travel, as well as guest interviews. On 5 August, a health section lasting about two minutes comprised of an extract from Masalabody.com - a website run by a fitness coach who uses spices to aid weight loss - plus a further 10 seconds on the "Matcha Miracle" recipe book by Mariza Snyder recommending powdered tea to aid weight loss. The segment was voiced by Dr Manny Alvarrez of Fox News. The section ends with Dr Alvaraz giving viewers direction to visit the Masalabody's website. On 6 August 2016, a segment also voiced by Dr Alvaraz provided details of a new fitness programme, Precision Running, devised by fitness instructor David Silk of Equinox Gym. There was also a technology segment presented by Douglas Kennedy of Fox News and a representative of Sailo, which rents boats and charter yachts.

Upon Ofcom's enquiry, Fox News confirmed there was no commercial arrangement between the brands and the news company. Fox confirmed there had been no commercial or financial incentive and the featuring of the brands was an editorial decision. Fox News contended the aim of the content was not the promotion of a product, service, or trademark, but instead to report on new "methods and techniques" that viewers may wish to learn or use. Fox News said that Masalabody, Sailo, and David Silk's book were used for "reporting and illustration purposes only [and] motivated by the news and information prerogatives of" Fox News. Fox also stated the features had a very limited running length with no time to provide comparators, and the purpose of the pieces was to provide viewers "a worthwhile and valuable experience". Fox also referred to Article 10 of the European Convention on Human Rights (ECHR), which enshrines the right to freedom of expression as to how they present their programme; concentrating on one particular business in a particular market segment did not make it promotional or advertising material.

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Rule 9.4 of the Broadcasting Code states “Products, services and trademarks must not be promoted in programming”, and Rule 9.5 requires “No undue prominence may be given in programming to a product, services or trade mark. Undue influence may result from the presence of, or reference to, a product, service or trademark where no editorial justification; or the manner in which a product, service, or trademark appears or is referred to in programming”. Ofcom considered the Masalabody.com segment more akin to advertising than editorial content, and it promoted the website rather than being content about healthy eating in general. Ofcom reached a similar determination regarding the Precision Running segment, which focused solely on David Silk and his Precision Running programme. Whilst Ofcom stated that it did not expect every claim about a product or service to be challenged by the broadcaster, the lack of any challenge was not editorially justified. Sailo’s section was about promoting a company than about hiring vessels for recreational purposes, for instance the prominence given to the company’s pricing and Fox expressing favourable comments about their service. Ofcom considered there was insufficient editorial justification to refer to one company’s services; such references were unduly prominent and constituted a breach of Rule 9.5. Ofcom considered all three segments promoted particular companies rather than explained a specific lifestyle or health option, and as such breached Rules 9.4 and 9.5.

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