[GB] Ofcom decision regarding the undue product placement of two broadcasters during coverage of F1 Singapore GP

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Ofcom, the UK communications regulator, in separate decisions concerning the prominent display of the Rolex logo during the coverage of the qualifying laps for the Formula One (F1) 2016 Singapore Grand Prix, held that Sky Sports FI HD (Sky) was not in breach of Rule 9.5 Code of Conduct concerning the prominent display of a product, service or trade mark during a programme; however, Ofcom held Channel 4 in breach for the undue prominent display of the Rolex logo during their edited highlights programme.

Sky and Channel 4 were licensees of the F1 coverage with Formula One Management Limited (FOM) being the licensor of the F1 TV rights and producers of the televised broadcast.

During the broadcast, there were shots of a large image of a Rolex clock face which was superimposed onto a large ferris wheel at the track. Additionally, during coverage, a small graphic of the Rolex featured briefly when race information such as the driver's name and race data was displayed.

Neither Sky nor Channel 4 had a legal relationship with Rolex, nor did they receive payment from the watch company who sponsor F1.

Ofcom accepted representations from both parties that the appearance of the Rolex did not meet the definition of product placement. However, the inclusion of the logo gave rise to potential issues under rule 9.5 of the Code of Conduct which says: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from: the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming."

Sky had a contractual obligation to FOM to show the practice, qualifying and race feeds as supplied by the licensor; although the broadcaster is not bound to transmit if to do so would result in a breach of Ofcom's Broadcasting Code.

Sky had no immediate control over the images shown, save for addressing issues such as bad language or live scenes of a horrific accident. Channel 4's contract

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with FOM was under similar terms.

Channel 4 and Sky said in their respective representations to Ofcom that the broadcasting of some sports events had changed over the last 20 years whereby broadcasters had to accept live content from a third party producer. Furthermore, they stated that sponsorship and the display of logos had become more prolific. Ofcom acknowledged that some latitude had to be applied in the implementation of Ofcom's Rule 9 and section 9 of the Communications Act 2003 concerning the extent to which commercial references can feature within a television programme. There has to be a clear distinction between editorial and advertising content.

Product references are not to be given undue prominence. There is no prescriptive list, but factors include the nature of the programme; likely audience expectations; and the suitability of the commercial reference. These factors needed to be balanced against the editorial parameters of the programme, including how much control a broadcaster has over the coverage.

Sky was obliged to transmit an unaltered live feed from five minutes before the start of the qualifying laps until its conclusion. Even so, Sky still had an obligation to comply with the Ofcom Code.

In the case of Sky and Channel 4, Ofcom considered that the images of the Rolex logo added to the ferris wheel were unduly prominent. As concerns the smaller logo, Ofcom did not consider the Rolex image unduly prominent, deeming it to be incidental to the race information being flagged on screen. Also, Ofcom acknowledged that Rolex was an official sponsor of F1.

Since the Singapore race, Sky and Channel 4 have spoken with FOM to ensure that sponsorship logos are not given undue prominence during transmission and this has not reoccurred. In the case of Sky, Ofcom considered that there was some justification for giving prominent reference to a commercial product in a live broadcast, even though it had no editorial relevance; nevertheless, the display was a cause for concern. However, given the steps Sky had taken to address the issue and the fact that there had been no reoccurrence, Ofcom considered the matter resolved.

Although Channel 4 had taken the same remedial action, Ofcom considered that there was no justification for the breach of Rule 9.5 as far as the edited highlights programme was concerned. Channel 4 contended that time constraints meant it was difficult to remove the offending images of the large Rolex image on the ferris wheel. Ofcom did not accept this argument and the inclusion of the images was considered unjustified. The commercial references to Rolex were unduly prominent and in breach of Rule 9.5.

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