

Episode two: Hong Kong relaxes regulations on product placement

July 2018

The Communications Authority ("**CA**") recently issued its decision to relax existing regulations on indirect advertising (commonly known as product placement) in television programmes ("**TV programmes**") and to lift bans on advertisements for undertakers and associated services. We have previously discussed the CA's decision in September 2017 to review its Generic Code of Practice on Television Programme Standards and Generic Code of Practice on Television Advertising Standards (together, the "**Codes**") in our article: *Opening the door for product placement in Hong Kong?* ([link](#)).

The CA conducted a one-month public consultation in April this year to gauge public views on its relaxation proposals, which were devised from an industry consultation with domestic TV licensees and studies conducted on TV advertising regimes in other major jurisdictions around the world. 63% of the respondents in the public consultation agreed that a general prohibition on indirect advertising (subject to exceptions on the types of TV programmes) should be lifted.

Major Changes suggested by the CA

- Product Placement refers to the inclusion of products/services within a programme in return for payment or valuable consideration received by a licensee. Under the new regime, product placement in TV programmes is allowed as long as the products/services are presented in a natural and unobtrusive manner and there is no direct encouragement of purchase or use of the products/services.
- Unpaid Commercial Reference refers to indirect advertising where no payment or valuable consideration is received by a licensee. The current ban on "undue prominence" of an unpaid commercial reference will be lifted under the new regime. Further, any unpaid indirect advertising arising from acquired TV programmes or direct re-transmission channels (including those on a pay TV service i.e. those produced primarily for reception outside Hong Kong which does not contribute to the licensee's advertising revenue (subject to conditions [1])), will be exempt from compliance under the new regime.
- Undertaker and other services associated with death or burial in licensed TV programmes and sound broadcasting services will no longer be prohibited as long as (a) the presentation of such advertisements is dignified and restrained, with due sensitivity exercised in the scheduling and presentation of such advertisements; and (b) all explicit references to death

and technical aspects of the associated services and morbid details must be avoided.

Exceptions, Loopholes and Notification Requirements

This new regime on product placement and unpaid commercial reference will not be applicable to certain types of TV programmes including news programmes, children's programmes, educational programmes, religious service and other devotional programmes. Product placement in current affairs programmes is allowed subject to the existing condition that licensees exercise due care in their choice of sponsors to safeguard the credibility and integrity of the programme.

The CA also tackled a potential loophole where product placements provided by companies associated with the licensee will still be subject to regulation (even if the licensee does not receive payment or valuable consideration). This prevents scenarios where licensees can circumvent the regulations in their provision of "free" product placement service for their associated companies.

The current regulations only require that sponsored programmes must be clearly identified in the sponsor credits. To better safeguard public interest under the new regime, an enhanced notification requirement is required for both product placements and unpaid commercial preferences in TV programmes. This requirement obligates licensees to inform viewers that a programme includes product placements before the programme commences broadcast (the CA suggests licensees to include notifications as follows: "*the following programme contains indirect advertising (以下節目含有間接宣傳)*").

The Future Ahead for Product Placements

This new regime truly represents a shift in the CA's approach towards regulation of indirect advertising and product placement in Hong Kong. It is anticipated that this new regime will significantly lower the number of complaints on indirect advertising in the near future. As quoted in the CA's press release, "*the substantiated cases of complaints on indirect advertising over the past eight years indicate that around two-third of such cases would likely be considered as compliant with the new regulatory regime*".

We very much look forward to see how this positive change will broaden the scope for advertising creativity in Hong Kong and how the regime can help facilitate constructive competition in the broadcasting industry.

The revised Codes will take effect on 27 July 2018.

[1] The condition that licensees should indicate in its programme schedule or superimpose a text message for at least 15 seconds when viewers switch to the channel that the channel is

acquired for direct re-transmissions and may contain indirect advertising.

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