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***A New Opportunity in Alternative Advertising –
Product Placement in Hungarian Media Law***

1. INTRODUCTION

The meaning of the word ‘media’ is quite widespread nowadays. Earlier we could associate it with television, radio, the press, but in this century it is impossible to give a correct definition of the word ‘media’. Thanks to the rapid improvement of technology it has further meanings. On the one hand, it means mass media and platforms but on the other hand, it means the institutions that manage them. Because of this massive improvement in every field of the media, law had to be refreshed in order to be effective. The results of the legislation were two new acts in the field of media law. These are Act CLXXXV of 2010 on Media Services and Mass Media and Act CIV of 2010 on Freedom of the Press and Fundamental Rules of Media Content. This is also known as “the Media Constitution”. Effective regulation on this field is essential. Media is different from any other kind of service. It is used for creating cohesion in the society. It helps to settle battles between members of the community and to spread national and international culture.¹ We cannot talk about it as a unified, integrated law or codex because the regulation includes constitutional, criminal, civil and administrative elements, too. The media law is a quasi branch of law because it is a complex, heterogene field that changes quickly.

¹ KOLTAY, ANDRÁS – NYAKAS, LEVENTE (ed.): *A magyar és európai médiajog* [The Hungarian and the European Media Law], 2012, Complex Kiadó, Budapest, 32.

In this short essay, I am going to write about commercials, their effect on people, but mostly about a newly integrated improvement called ‘product placement’.

A wider category is called ‘embedded advertising’ in legal literature. However, in order to be punctual, I have to emphasize that there are two different parts: product placement and product integration. The first one is a visual or sounding reference of a product, brand or service, while integration means when it is really integrated into the programme.² As far as I am concerned, these two types are not separated in everyday life. Embedded advertising mostly appears in movies and series but nowadays it is not so strange if we meet this type of advertising in music clips, novels or computer games.

Consumers today experience more advertising messages than they experienced at any other times in history. This phenomenon is known as “ad creep”.³ It is normal that people are not patient and disrelish commercials, so advertisers and advertising messages have to change policy. Facilities of modern technology make it possible to record programmes and play them later. That time it is easy to leave commercials out. And I have not mentioned online sites – where movies can be watched without interruption –, or downloading, so far. In the case of commercial channels income from advertisers means almost everything for them in order to exist. They need to find a compromise. That is why product placement came to mind.

Erwin Ephron says that the paradox of product placement is: If you notice it, it is bad, but if you don’t, it is worthless. The essence of product placement can be found in this short sentence. It should not be ostentatious but surely it has no sense if nobody recognizes it. Gabor Fabricius, creative chief of Republic of Art agency has a humorous thesis about good product placement. He says that good

² FUJAWA, JENNIFER: FCC’s Sponsorship Identification Rules. Ineffective Regulation of Embedded Advertising in Today’s Media, in *Federal Communications Law Journal*, Vol. 64. Issue 3. (2012) 551.

³ SAID, ZAHR: Embedded Advertising and the Venture Consumer, in *North Carolina Law Review*, Vol. 89. Issue 1. (2010) 115.

product placement is when you feel the product; logo etc. is only accidentally there but you – the viewer – are so clever and skillful to notice that, for instance, they use Nokia.⁴

Product placement in Hungary is a new implementation that is why I picked this topic for this article. When I started the examination more phenomena could have been noticed. Firstly, in my opinion, the number of warning signs was sometimes massively increased without any real product placement. This led me to the question: how strict our regulation is regarding this topic? Moreover, I would have liked to separate two really similar subjects which are product placement and sponsorship. In my opinion, this could be the reason of unnecessary warning signs because media services are more careful instead of being forced to pay fines.

At first, I am going to mention Hungarian regulation including European Union suggestions and at the end I am going to give some details about the new co-regulation system that our country applies.

2. PRODUCT PLACEMENT IN THE LEGAL SYSTEM

At first, the Union chose the policy to let national laws create their own regulation. However, because of technical improvement it changed its mind. Today, it has a balancing regulation suggestion; advertisers, media services and firms were taken into consideration.

Audiovisual Media Services (AMS) Directive of European Parliament and Council on 10th March 2010 suggested member states to provide audiovisual media in their country. This Directive aims at producing a framework for cross-border audiovisual media services in order to strengthen internal programme production and distribution market and to guarantee conditions of fair competition. The Directive gives a certain definition of product placement under

⁴ PAPP-VÁRY, ÁRPÁD: *Product placement Reklám a filmekben, számítógépes játékokban és a szórakoztatóipar más területein* [Product Placement – Advertising in Movies, Computer Games and Other Areas of the Entertainment Business], 2008, Századvég BKF, Budapest, 42.

point ‘m’. It means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, service or trade mark which is featured within a programme, in return for payment or similar consideration.⁵ It should be allowed under certain circumstances, unless a Member State decides otherwise. However, where product placement is surreptitious it should be prohibited. The principle of separation should not prevent the use of new advertising techniques. The definition of product placement laid down in this Directive should cover any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or a trade mark which is featured within a programme in return of payment or similar consideration. Product placement should, in principle, be prohibited. However, derogations are appropriate for some kinds of programme, on the basis of a positive list.

3. MEDIA LEGISLATION IN HUNGARY

As I have mentioned it before, product placement has only been an element of the legal system since 2010. Act CLXXXV of 2010 on Media Services and Mass Media includes and regulates this. Earlier, it was not equal to the suggestions of the EU because it was only allowed for example in fictional movies, however, it was mostly banned.⁶ The complete ban resulted in a chaotic situation so the former Media Authority (ORTT) allowed product placement in some cases in its Resolution nr. 258/1997 (XI. 5.).⁷ According to a survey

⁵ The Audiovisual Media Services (AMS) Directive of European Parliament and of the Council of 10 March 2010.

⁶ Act I of 1996 on Radio and Television Broadcasting Art. 10. para. (5).

⁷ Art. 2. point a) Product placement is allowed only in fictional movies, free and only until it is lifelike.

from 86 advertising firms, 30% ordered product placement before the new regulation and 70% was clearly aware of the illegal act.⁸

It is risky that some provisions of the Directive are applied to online media content too, which can negatively affect sponsorship.⁹ The two directors of commercial TVs in Hungary agreed with the decision of the new regulation. It was necessary to do this in order to keep balance between them because if it broke, Hungarian media would collapse.¹⁰

Act CLXXXV of 2010 on Media Services and Mass Media specialize the regulation in Art. 30-31.

3.1. *Permission or prohibition*

Product placement is prohibited. By way of derogation from the first sentence, product placement can be admissible in the following cases: in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes or where there is no payment but the provision of certain goods or services is free of charge such as

⁸ For the exact diagram: N. N: *Látja? Nem látja? Na látja!*: Tabutéma a product placement [Do You See? Don't You See? You See! The Product Placement as a tabu], in *Kreatív: marketingkommunikációs szaklap*, Vol. 12. No. 3. (2003) 19.

⁹ POLYÁK, GÁBOR: A médiapiac szabályozása az új médiatörvényben [The Regulation of the Media Market in the New Media Act], in *Médiakutató Jog rovat*, 2011 Spring http://mediakutato.hu/cikk/2011_01_tavasz/03_mediapiac_szabalyozasai/01.html?q=term%C3%A9kelhelyez%C3%A9s#term%C3%A9kelhelyez%C3%A9s [cit. 2013-11-27].

¹⁰ LAMPÉ, ÁGNES: Médiaszabályozás: pró és kontra Simon Éva, Széky János, Hanák András, Polyák Gábor, Koltay András, Nyakas Levente és Lapsánszky András a 2010-es médiatörvény-csomagról [Media Regulation Pro and Con. Éva Simon, János Széky, András, Hanák, Gábor Polyák, András Koltay, Levente Nyakas and András Lapsánszky about the Media Act Package], in *Médiakutató Jog rovat*, No. 4. (2011). Available at: http://mediakutato.hu/cikk/2011_04_tel/01_mediaszabalyozas/01.html?q=term%C3%A9kelhelyez%C3%A9s#term%C3%A9kelhelyez%C3%A9s [cit. 2013-11-27].

production props and prizes, with a view to their inclusion in a programme. As for the first case, it is not allowed in children's programmes. The Act does not explain what light entertainment programmes are but in my opinion a taxative enumeration would be impossible. There are special requirements that programmes have to meet, like their content and, in the case of television broadcasting, their scheduling must in no circumstance be influenced in such a way as to affect the responsibility and editorial independence of the media service provider; they must not directly encourage the purchase or rental of goods or services, viewers have to be clearly informed about the existence of product placement. Programmes containing product placement must appropriately be identified at the beginning and the end of the programme, and when a programme resumes after an advertising break, too, in order to avoid any confusion on the part of the viewer. By way of exception, it can be left out if the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

It is restricted to use product placement in news, political programmes, especially programmes for minors under the age of 14, religious or ecclesiastic or reports on national celebrations, or official events. In any event, programmes must not contain product placement of: tobacco products, cigarettes or product placement from undertakings whose principal activity is manufacturing or selling of cigarettes and other tobacco products; specific medicinal products or medical treatments available only on prescription, any gambling services for which a state tax authority's permission is needed, and products that may not be advertised pursuant to this Act or other pieces of legislation.

National Media and Infocommunications Authority and the Media Council approved a recommendation about further rules which helps to understand the Act and its regulations.¹¹ It is contained in this chart, which helps to understand where the use of product placement is allowed:

PROGRAMME TYPE	PRODUCT PLACEMENT AGAINST PAYMENT OR CONSIDERATION IN EXCESS OF THE PROVISION OF THE PRODUCT TO BE PRESENTED (cases 1. and 2.1)	PRODUCT PLACEMENT AGAINST THE PROVISION OF THE PRODUCT ITSELF FREE OF CHARGE (case 2.2)
News programmes	no	no
Political information programmes	no	no
Programmes reporting on the official events of national holidays	no	no
Programmes with religious or ecclesiastical content	no	no
Programmes intended specifically for minors under the age of fourteen	no	yes
Cinematographic works (cinema and TV)	yes	yes
Film series (TV)	yes	yes
Sports programmes	yes	yes
Entertainment programmes	yes	yes
Other programmes (with the exception of Paragraph (3) of Article 30 of the Media Act)	no	yes

1. Schedule.

¹¹ Available at: http://mediatorveny.hu/dokumentum/557/product_placement_Rec_EN_130111.pdf [cit. 2013-11-27].

4. CO-REGULATION

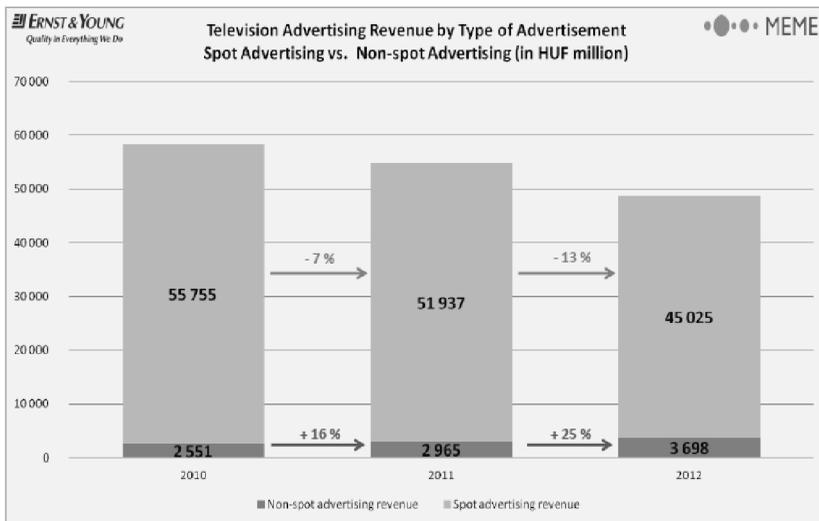
The co-regulation system of the Media Act provides an opportunity for self-regulatory organizations to participate in the arrangement of cases falling under the competence of the Media Council. It is based on the principle of subsidiarity. Self regulation was a basic but existed field in the media sector, however, the Authority wanted to improve it. This, compared to other types of self-regulations found in other sectors and administrative areas (e.g. alternative dispute resolution procedures such as conciliation or mediation) is a stronger – the strongest possible and still constitutional – authorization. In order to achieve the best results, the Authority cooperates with media providers, subsidiary media service providers, publishers, broadcasters, intermediary service organizations, and professional self-regulation of alternative dispute resolving forums. In my opinion, it is a really good decision. It helps to solve problems together and the Authority has less burden.

The tasks were split between four professional self-regulating organizations: *Önszabályozó Reklámtestület (ÖRT)*, *Magyar Lapkiadók Egyesülete (MLE)*, *Magyarországi Tartalomszolgáltatók Egyesülete (MTE)*, és a *Magyar Elektronikus Műsorszolgáltatók Egyesülete (MEME)*.

The supervision of the effective and fair use of product placement is the task of MEME.

They signed an administrative contract and there is a codex which details the rules of supervision and processes. This organization does advertising revenue surveys every year. The subject of 2012 was product placement. The diagram below shows that incomes from commercials have a decreasing tendency year by year, but in this situation, the number of product placement increases.

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1. Figure: Television advertising revenue by type of advertisement.¹²

*4.1. Magyar Elektronikus Műsorszolgáltatók Egyesülete*¹³

In this article MEME is important because its task is to supervise product placement. Purposes of the organization include developing ethics and professionalism in work. Its main task is to consult and make recommendations in order to take part in legislation and economic decisions, reviews and revision. Moreover, it has been doing surveys since 2005 under the name of Reklámtorta (Commercial Cake). Once or twice a year a slice of interesting information is published with researches and surveys.¹⁴

From March of 2012, the head of the organization has been Krisztián Kovács. Member can be any public or commercial

¹² See http://www.memeinfo.hu/system/files/attachments/reklamtorta_2012_2_28_eng_final_v3.pdf [cit. 2013-11-27].

¹³ MEME's Basic Code of Rules. Available at: www.memeinfo.hu/system/files/alapszabaly_alairt.pdf [cit. 2013-11-27].

¹⁴ MEME posts the results of its surveys every year under this name.

television or radio, or a person who is related to the field of media and accepts behavior charter as obligatory.¹⁵ Membership is voluntary and starts by submitting a written acceptance. Media Authority provides them money to cover co-regulative process. It consist one normative and other special allowance.¹⁶

4.1.1. The contract

It was signed by Levente B. Málnay (MEME) and Annamária Szalai (Media Council) on 20th July 2011. The original contract was amended on 19th September 2012. Its legacy is based on the Behaviour Conduct. The self-regulatory body is not be deemed as an administrative authority, or a subject of the system of public administration under this authorization.

The authorization covers the handling of individual cases related to undertakings under the scope of the Code, the settlement of disagreements and legal disputes – involving the scope of the authorization – between undertakings under the scope of the Code, and the supervision of the operation and conduct of undertakings under the scope of the Code in relation to the authorization. Under the administrative contract, Media Council and the self-regulatory body can agree on joint performance of tasks and implementing principles of activity and service development, programmes of public concern not regulated in legislation but closely linked to media administration and media policy, and any other objectives related to the media. MEME's authorization includes exercising supervision regarding compliance with Articles 14-19 and some parts of Article 20 of Press Freedom Act, or any of those provisions in relation to online press products or on-demand media services.

¹⁵ For members of the organisation, *see* <http://www.memeinfo.hu/tagjaink> [cit. 2013-11-27].

¹⁶ For exact prices and support, *see* http://mediatanacs.hu/dokumentum/153678/meme_szerzodes_egyseges_szerkezet_120912.pdf [cit. 2013-11-27].

4.1.2. Code of Conduct¹⁷

It details the parts of authorization and product placement settled in Article 15.

The rules are balanced with the media Act. It informs us about the deliberation e.x. the impact of acts and processes that should be taken into consideration. Moreover, society and people's reputation is also important.

The second part of the Code contains the details of the regulatory process. If acts of the Code are broken a 3-member-committee is formed to analyze the situation. One of them is a legal expert. Two types of committees can be formed: case by case or permanent. The procedure can be started upon request or after a special supervision ex officio. It is not public and charges have to be paid in order to get it started. The person whose rights or legitimate interests are compromised by the media content can turn to the media service provider and give in his/her request within 30 days. If the request is rejected or left without an answer co-regulation can be requested within 15 days.

Possible consequences of the procedures:

1. If the request of the first instance is punctual, the co-regulation organization can call the media service provider to make an agreement with the requester within 3 days. If not, it has 3 days to make its defense, collect and submit its evidences.
2. If the provider changes or erases the questioned content, moreover, promises not to continue that behavior, the organization cancels the procedure.
3. The decision can contain the consequences below:
 - a) if it is needed, the organization makes the provider change or stop its behavior and demands in integrum restitution;

¹⁷ See http://mediatanacs.hu/dokumentum/153678/meme_szerzodes_egyseges_szerkezet_120912.pdf [cit. 2013-11-27].

- b) the organization can make the provider to give compensation equal to the law breaking e.x. that the compensation shall be public;
- c) the provider can be forced to provide non-material compensation, the payment of the procedure charges, or other expenses;
- d) it can withdraw the right to be connected to the organization during other procedure for a certain time – in that case it will be under the supervision of the Media Authority.

The committee can apply more consequences from the above mentioned. 15 days are provided for the possible remedy. The Media Council's supervision can be required.

5. BLURRED LINES AND DE LEGE FERENDA SUGGESTIONS

In this chapter I will try to clear the blurred line regarding regulations. Some definitions are really similar but mean different things. It is easy to mix them because the differences are not well-stated.

In Article 1 of Chapter 1 of the AMS Directive we can find sponsorship among the Definitions. It means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promote their name, trade mark, image, activities or products. In my opinion, there are two main differences to show which are not clear enough. The first one is the purpose of money, the payment. In case of product placement, the purpose is to have the product appear in the movie, series etc. On the other hand, in the case of sponsorship, they sponsor the whole Programme or movie in order to provide promotional service. The other difference is the result of the impact and how they try to achieve it. When we speak about product placement, the brand, the product is integrated into the programme, into the plot, while if it is sponsorship, it can be

shown during the programme but never as a part of it. 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 the programme. In contrast, sponsor references may be shown during a programme but are not part of the plot.

The division of editor work and commercial can be felt in the case of sponsorship, while product placement is not so strict in that case. It has its own rules; it cannot be regulated as other sideway commercial types.

Naturally, it cannot be said that these two institutions exist without the other. They both can appear in the same programme even with the same product. In Hungary, sponsorship and product placement is allowed together even if the sponsor and the product placer is the same person, firm; and the product, brand, service or logo is the same. In France, there are stricter rules in this case so the sponsored product cannot be shown as product placement in the same programme.

As far as I am concerned, the most contentious part of this topic is the difference between product placement and surreptitious commercial communication. The line is really thin and now, when product placement is legally allowed it is easy to make mistakes. Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content in Article 20 states that no surreptitious commercial communication may be published in media content. It happens when product placement has bigger emphasis than it is needed. According to the Recommendation of the Media Council, programmes containing product placement may not call for the purchase or rental of a product or the use of a service in direct manner. Such a “direct call” is any – verbal or visual – intentional and clear appeal to purchase, promote or use the product or service that is the subject of product placement, especially, the communication of the following information in the programme:

1. publication of commercial availability and price of the product/service;
2. communication of properties/advantages of the product/service;

3. publication of slogan of the product/service;
4. mentioning of statements from the product/service's advertisement.

Programmes containing product placement may not give any unjustified emphasis for the product so displayed which, otherwise, does not stem from the content of the programme flow.

Undeniably, there are common roots with surreptitious advertising, however, it cannot be said that product placement is a surreptitious advertising with a warning call. My questions were clarified at the end of my research and a survey conducted in commercial channels proved that there are many unnecessary precaution warnings without real product placement. I believe that the main problem is the lack of information. People are not informed enough about the laws and opportunities. Detailed and systematic information should be provided for people to work effectively because without this the innovative plan of co-regulation will not work. It also might be possible that the co-regulatory system – which has not been built up in practice overseas – would be given more room, the self-regulatory framework would be provided by the law, but the content could be created by those organizations. The self-regulatory organizations are intended to serve utility and involve substantial deregulation.

6. CONCLUSIONS

All in all, product placement is much more popular among producers because its effectiveness is better than that of traditional commercials'. Because viewers meet products which they choose, it is much more likely to accept the commercial and the impression will be favorable.¹⁸ With the alternative ways of media consumption (e.x. DVR) making new ways, product placements will inevitably

¹⁸ BEASLEY, ROBERT C.: Royalty Free Permissions for Use of Licensed Products in TV or Movie Productions, in *Licensing Journal*, Vol. 2. Issue 5 (2006) 37.

grow because of their “win win win” nature across relevant industries. As Jay May, founder of Feature This! suggested, the production of a show or movie (or video game) wins because it gets brands for free and can greatly reduce production budgets. Clients win because of the relatively inexpensive branding of their product (and in some cases, to a very targeted audience [i.e., teen movies]), and product placement agency wins as they get paid for bringing the parties together.¹⁹

According to the survey of Sonda Ipsos Zrt., 17% of Hungarian viewers see brand products every day and the typical age is between 20-29. It was made in 2011 so I am sure that the numbers are even higher now.

Scott Donaton, a U.S. marketing communications magazine’s columnist drew attention to the fact that beside product placement, there are still other options for advertising to survive. For example BMW’s short film series combine the content and the brand. In the 20-minute “mini-cinemas” the company’s directors hired famous people to promote brands. The innovative solution was not left without success; at the International Advertising Festival in Cannes they got a Titanium Lion prize.²⁰ We can state that Hungarian regulation is in an extremely early stage of development and there is a long way ahead of us that began in 2011.

Finally, I want to mention an American movie entitled the Joneses.²¹ It is about a family who moves into a high income suburb under the pretense of being a typical family who lives the American dream. In reality, Kate is the leader of a team of stealth marketers, professional salespeople who disguise product placement as a daily routine. Their clothing, accessories, furniture, and even food are

¹⁹ LA FERLE, CARRIE – EDWARDS, STEVEN M.: Product Placement. How Brands Appear on Television, in *Journal of Advertising*, Vol. 35, No. 4 (2006) 84.

²⁰ MÁRK, SZONJA: Unalmas product placement [Boring Product Placement], in *Kreatív: marketingkommunikációs szaklap*, Vol. 14. No. 4. (2005) 8.

²¹ See <http://www.imdb.com/media/rm3528560384/tt1285309> [cit. 2013-11-27].

carefully planned and stocked by various companies to create visibility in a desirable consumer market. The movie is a double twist; there are double embedded advertisings while in such a story it is impossible to leave products out. Is this just irony and caricature of the present situation or do advertisers' rule the media in reality?

I will leave this question open because it really makes us think. We can conclude that commercials will never vanish, just transform and adapt to the new inventions.

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