

## **PROHIBITION OF PRODUCT PLACEMENT IN DANISH TELEVISION PROGRAMS**

*New rules in the Act on Radio and Television Broadcasting mean that product placement in Danish television programs on television and on-demand audiovisual media services are no longer permitted.*

### **Introduction**

On 1 June 2013, the Ministry of Culture's bill amending the Act on Radio and Television Broadcasting was implemented. The amendment meant that the ban on product placement was reintroduced. Product placement is defined as the displaying of or making of references to a product, service or trademark as part of a program against payment or other consideration.

The previous rules stated that in principle, product placement was not allowed, but that there were exceptions from this rule in that product placement was allowed in feature films, films and series made for television, sports programs and light entertainment provided that a number of conditions were met. Among the conditions that had to be met was that the viewers should be clearly informed that the program contained product placement and that the goods in question were not given a needlessly prominent role.

### **Ban on Product Placement**

In the new rules on product placement, the exemption clause has been removed pursuant to the Act on Radio and Television Broadcasting Section 85 a(1). The intensification is in line with the EU Directive of 10 March 2010 on the coordination of certain provisions of the member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive). The Directive is a minimum directive which makes it possible to apply stricter rules in the areas covered by the Directive.

The Minister for Culture is still authorized to lay down rules on product placement and the possibility of waiving the ban is maintained. Thus it is still possible to authorize the broadcast of programs on television and on-demand audiovisual media services produced abroad, regardless of whether or not they contain product placement. The ban cannot, however, be departed from in relation to children's programs and news and current affairs programs.

A violation of the ban on product placement may be fined in accordance with the Act on Radio and Television Broadcast Section 93.

### **Our Assessment**

The new rules on product placement are more restrictive than those prescribed in the Directive on audiovisual media services, and it is our experience that the Danish rules on the use of product place-

ment after the amendment are more stringent than in the other EU member states.

The reintroduction of a ban on product placement should probably be viewed as a manifestation of the fact that product placement is sometimes compared with hidden advertising which is prohibited under the Marketing Practices Act. However, it is our opinion that the ban on product placement may possibly have an adverse effect on the development of Danish productions in competition with foreign productions.

In any case, producers and broadcasters should make sure to take the changed legal situation into account in future contracts.

Should you have any questions or wish further information on the above, please contact Partner Pernille Nørkær (pno@mwblaw.dk) or trainee Thomas Bento-Nystad (tbn@mwblaw.dk).

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