Open Source Consortium

Annex

Introduction

In our original complaint we argued that there was no determinable process for determining what constituted undue product prominence.

The guidelines provide an indication but according to the information we received subsequently there are no underlying tests, for example:

- beyond any doubt
- beyond reasonable doubt
- balance of probabilities
- common understanding

We provided an example of a programme we thought demonstrated the correct approach to discussing a product in a manner that avoided undue prominence. (You and Yours, June),

Subsequently we were given insight in how the editorial guidelines appear to be applied as a consequence of listener/viewer complaints discussed on BBC Radio "Feedback".

The head of Editorial Standards for network radio defended charges of undue prominence with regards to "Facebook" and "Twitter". We have annotated the ways in which he appears to show one or more of:

- poor understanding
- lack of research
- inappropriate comparisons
- inconsistency
- poor logic

In such circumstances it is difficult to understand how the editorial guidelines are used

Feedback - 28 September 2012
Transcription from podcast beginning approximately 21:05 after start

Roger Bolton (RB), the presenter discusses with Paul Smith (PS), introduced as the **head of Editorial Standards for network radio,** concern about prominence and promotion of Facebook and Twitter

Complaint by Jeremy Brettingham (JB)

"I'm fascinated why so many presenters are constantly referring us to Facebook and Twitter[…] all the time. My understanding was that the BBC code of practice specifically asks people not to refer to individual companies and promote individual brands. Has something changed or what?"

Complaint by Geoff Weston (GW)

"I've been concerned recently at the amount of programmes that seem to be encouraging us to go on Twitter and the Today programme is a classic example. I found I could only look at [photographs] on Twitter. Twitter is a commercial organisation. It now seems to be almost a BBC partner. And also what about the people that don't have easy access to the internet or like me don't want to join Twitter?"

Paul Smith (PS) was asked by Roger Bolton (RB), the presenter, about the existence of any kind of formal contractual relationships with Facebook or Twitter

PS: not a contractual relationship in the sense that we've bought time or space or they pay us [indistinct: or anything?] there's nothing like that

RB: no money changes hands

PS: no, no, no, no, we do use social networks site and we often have agreements, really for the sort of, smooth running of the operation, mainly so that if there are problems we can sort them out and then that there is something written down.

> **That there is a relationship of whatever kind is likely be of financial value even if not monetary.**

RB: one of our listeners [JB] is concerned that these brands are mentioned, he says, every five seconds. Just to be clear, BBC presenters should not endorse commercial products, should they?

PS: That's right, they shouldn't endorse commercial products but these are not products in the same sense in that these are platforms which we are using, er, these days, sometimes to broadcast on but also to allow interaction with the audience.

A product is a simply a good or a service[1]

RB: But Twitter is a commercial company

PS: It is

RB: makes profits

PS: But we also talk about making phone calls which obviously is largely BT, we obviously talk about people writing letters which is the Post Office. They're commercial organisations as well.

This would appear to use the fallacy that two wrongs make a right[2]

Moreover the justification for mentioning specific products as opposed to general services appear to based on poor market assumptions regarding other products:

- **There are five major providers of fixed line services: BT, Primus, Post Office, Talk Talk, Virgin Media[3].**
- **Ofcom provides simple access to appropriate information on mobile phone ownership and fixed line ownership indicating, for example 92% of adults have a mobile phone, 15% of homes do not have a fixed line, and that BT only have 36% of the fixed line market[4].**
- **The Post Office has lost its letter monopoly[5] and alternatives are emerging[6].**
- **Whether or not there are fully developed alternatives to the Post Office for everyone in the UK is not for the BBC to influence, as might be inferred from some of the statements of Paul Smith, e.g., after 25:06.**
- **The market is developing and "obviously" a letter, particularly a business letter, might not be the exclusive domain of the Post Office.**

RB: (laughs) yeah

PS: There's nothing else like Twitter. And if you want to talk about something which allows you to communicate in this way there is only Twitter to talk about.

This would appear to rely upon the fallacy of the consequences of a belief[7]

Even if the assertion were true (it is not) that Twitter is the "only" platform it does not mean that it is always going to be true.

However if the BBC only promotes the dominant provider it will be difficult for new services to emerge or survive.

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1   http://www.businessdictionary.com/definition/product.html
2   http://www.nizkor.org/features/fallacies/two-wrongs-make-a-right.html
3   http://www.moneysavingexpert.com/phones/home-phone-calls
4   http://media.ofcom.org.uk/facts/
5   http://news.bbc.co.uk/1/hi/business/4274335.stm
6   http://news.bbc.co.uk/1/hi/business/8297025.stm
7   http://www.nizkor.org/features/fallacies/appeal-to-consequences.html

For example the BBC provides a breaking news service on Twitter.

Many years ago (15-20?) ago the BBC used to provide a desktop "app" for breaking news on Windows platforms (it might still do).

There are existing micro blogging alternatives to Twitter. In 2009 PC Advisor identified twelve[8] and there is at least one serious alternative[9] "identica". It would take little effort to cross-post as illustrated

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8   http://www.pcadvisor.co.uk/news/internet/3208020/12-best-twitter-alternatives/
9   http://identi.ca/

PS: The real thing here is that actually when we do talk about products, because we live in the real world, we should be talking about a number of different products and in fact we talk about...

This is inconsistent with the earlier assertion that Facebook and Twitter are not products. Moreover the discussion is about the absence of different products.

RB: (interrupting) This is not talking, sorry, but to me[?] There's a distinction between talking and mentioning a product and endorsing it. It's one thing for me to say "Twitter is available". It's another thing for me to say "you should use it".

PS: Well I don't think you should promote it quite as strongly as that, but we are using Twitter as part of the programmes and so you would expect the presenters to talk about it. Because is is a very useful way of communicating with the programme and the listeners.

This would appear to be a red herring[10]

It side steps the very issue under discussion: should the BBC be using Twitter at all/exclusively, it's not about usefulness

RB: Listener Simon White is concerned about this and he says given the enormous online presence of the BBC surely it's capable of broadcasting its own web based content without having to hand it over to a commercial company. Couldn't you develop your own version of Twitter?

PS: We can't go round sort of duplicating absolutely everything when there is something that works perfectly well that we can take part in.

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10 http://www.nizkor.org/features/fallacies/red-herring.html

> **This would appear to be a false dilemma[11]. There are other options including justifying doing something at all if there were no alternative to doing it.**

PS: And also, there is another really big thing here in that there are 10 million users on Twitter. There are 30 million on Facebook. You know, these communities are already there, we are really going where the people are.

> **This argument appears to use both "ad populam"[12] and "post hoc ergo propter hoc"[13] as justification. Even if the argument is well founded (what about future market trends) the BBC seems to apply it inconsistently.**
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> **For example, on Monday 8 October, 18.27, Radio 4: Rory Cellan-Jones advised that the new BBC iPlayer for radio is available "now" for the iPhone and "soon" for Android**
>
> **A Charles Arthur article in the *Guardian* earlier this year identified that Android had a bigger market share (36.9%) than Apple (28.5%) but more importantly that their combined reach was only about 2/3 of the user base[14]**

RB: And are you giving them privileges? For example listener GW says he can only access certain kinds of content via Twitter For example [photographs]. Only on Twitter. He says shouldn't BBC content be available to all licence fee payers?

PS: Yes it should be and er,

RB: (interrupting) So that was a mistake?

PS: In that particular case I think that's where they were first available but they were made available quickly elsewhere.

> **Time is of the essence. With instant communication shorter time intervals are significant.**
>
> **They might have been made available elsewhere later but advantage was given to the first instance. If it is going to be instantly available "here" and there is a need for this speed of delivery there there is no incentive to wait for them to appear "there".**

RB: Behind all of this are some people's reservations about Twitter and about Facebook. They'll point to what they would call a number of scandals.

PS: Well, I'm not aware that these companies are doing anything illegal and I don't think that we would have any sort of relationship with them if we thought they were.

> **This would appear to rely upon "consequences of a belief"[15]**
>
> **It is unclear what PS's state of awareness contributes to the argument for or against. I understand that under the law of England and Wales, at least, one does not have rights only remedies (I.e., litigation might be required to establish illegality).**
> **If the concern expressed is genuine should not the BBC have some form of risk based approach to pre-emptively avoid contributing to harm.**

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11 ww.nizkor.org/features/fallacies/false-dilemma.html
12 http://www.nizkor.org/features/fallacies/appeal-to-popularity.html
13 http://www.nizkor.org/features/fallacies/post-hoc.html
14 http://www.guardian.co.uk/technology/2012/feb/21/android-smartphones-os-uk-apple
15 http://www.nizkor.org/features/fallacies/appeal-to-consequences.html

For example at least one of the organisations mentioned is under scrutiny for privacy concerns[16] [17] [18]

Moreover, (intended as an illustration of the quality of the original statement rather than a comment on the company concerned), the BBC still deals with a convicted monopolist that has just been threatened with a €5.7bn fine for further illegal behaviour[19]

PS: And to be honest we can't police the internet. The BBC is not in that game. We are a user like anybody else is.

This would appear to rely upon the fallacy of appeal to common practice[20]

They are not just another user.   The BBC is a major actor influencing many markets (e.g., promoting DAB radio) with significant reputation capable of being reused by others for commercial or other advantage, e.g.

Wyedean Canoe Hire[21]	**"For the second year running the BBC Countryfile team have chosen Wyedean because of our unique knowledge of the area and our Safety ethics."**
Environ Pest Control[22]	**"Environ: stars of BBC One's 'The Rat Pack'"**
Belmore Tools[23]	**"CEL Multi Tool - As Seen On BBC Dragons Den"**
Monty Halls[24]	**"As seen on BBC - Monty Halls new website goes live"**

p to...

As seen on BBC - Monty Halls new website goes live

14th June 2012 @ 7:40am

A well known BBC TV presenter, marine biologist, ex-marine, travel writer, public speaker and diver, Monty Halls already had an impressive CV. Then he and his team decided to open a shop in Dartmouth, South Devon offering wildlife trips and diving courses to locals and visitors, with a chance to buy Monty merchandise and meet Monty and Reubs.

With all this in mind, Formoda were approached to create a new brand for Monty Halls Great Escapes, which also led to a new brand for Monty himself and subsequent brochures, signage, leaflets and of course, the website.

The most important thing about the new website was to ensure that it was easy to update using Formoda's fabulous website content management system, as Monty's busy life, TV schedule, public speaking events, and regular trips and courses mean that the website information needs to be up to date and current.

While these examples are small scale and so do not meet the legal test for market distortion

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16 http://www.telegraph.co.uk/technology/facebook/8917836/Facebook-faces-EU-curbs-on-selling-users-interests-to-advertisers.html

17 http://www.zdnet.com/privacy-watchdog-probes-facebook-facial-recognition-3040093048/

18 http://mashable.com/2012/05/04/facebook-privacy-concerns-study/

19 http://www.zdnet.com/microsoft-faces-eu-fine-over-browser-choice-error-7000004723/

20 http://www.nizkor.org/features/fallacies/appeal-to-common-practice.html

21 http://wyedean.co.uk/bbc-countryfile

22 http://www.environpestcontrol.co.uk/

23 http://www.belmoretools.co.uk/acatalog/CEL_multi_Tool.html

24 http://www.formoda.co.uk/blog/218/as-seen-on-bbc-monty-halls-new-website-goes-live/

they illustrate the power of the BBC reputations the BBC itself recognises[25]

"Because of the BBC's position as a publicly funded organisation it is not permissible for contributors to use BBC logos, clips or other BBC intellectual property to promote their participation. This means that you cannot, for example, use the BBC logo or a programme logo on promotional literature, product packaging, vehicle livery or your website, nor can you use, on your website or elsewhere, moving footage or stills of your appearance on a BBC programme."

Except where it happens[26] [27]
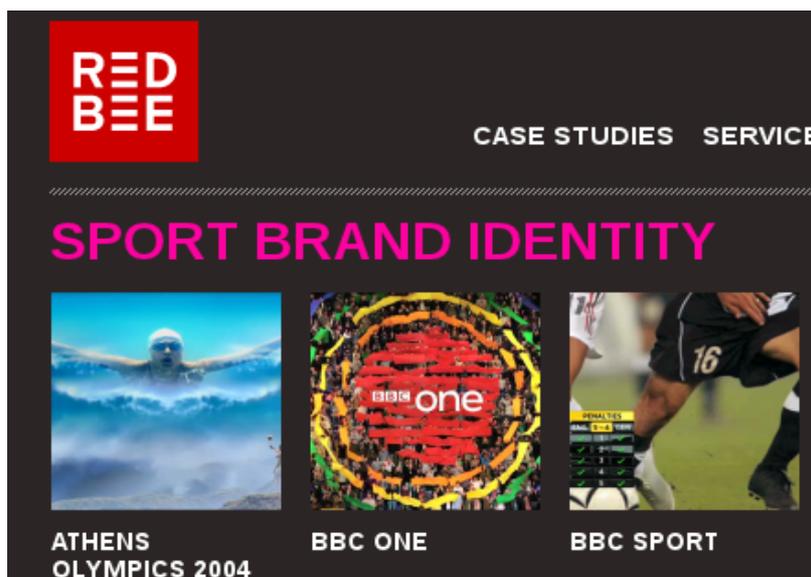
The value of the BBC brand in advertising is clear, as the BBC itself writes in promoting advertising in non-UK territory[28]**:**

> **"The BBC has a worldwide reputation for high quality content from its balanced and impartial news coverage on TV and online to original formats […]. "**

> **"This high quality content has attracted a high quality audience. The BBC audience [...] are often opinion formers who influence those around them."**

> ***"This combination of quality content and a quality audience offers benefits to advertisers too."***

> ***"Typically, our audiences than are more engaged and trust us more than other international media owners."***

> ***"This trust and engagement filters through to how they perceive advertising content, which is in turn reflected in positive results for our clients."*** **(our emphasis)**

If it's true worldwide it would seem be true in the UK.

RB: We at Feedback are not whiter than white. We ask people to contact us via Twitter.

25 http://www.bbc.co.uk/branding/logo_use/contributor.shtml
26 http://www.redbeemedia.com/thegames/brand-identity/bbc-sport
27 http://www.redbeemedia.com/thegames/sport-brand-identity
28 advertising.bbcworldwide.com/docs/case-study/bbc-advertising-case-study-compendium---august-2012.pdf

Should we do so?

PS: I think you should but you should also make sure that, er, you invite people to contact you in other ways as well. And that might be by letter and it might be by phone call but **what I would expect to hear is the audience being invited to take part in a number of different ways.**

Which would be easier if the BBC enabled the alternatives for the audience to use