



## **Product Placement Accelerating on a Slippery Slope.**

By Max Sutherland

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Dr. Max Sutherland's column is published monthly and posted on the web at [www.sutherlandsurvey.com](http://www.sutherlandsurvey.com). Receive an advance copy by email - [free subscription](#). Max Sutherland is author of the book '[Advertising & the Mind of the Consumer](#)' (published in 8 languages) and is a registered psychologist. He works as an independent marketing consultant in Australia and USA and is also Adjunct Professor at Bond University. Contact [msutherland@adandmind.com](mailto:msutherland@adandmind.com).

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***When companies make undisclosed payments to push their brands into the public's awareness, it is called 'product placement'. When record companies do the same thing it is prosecuted as payola! While regulators 'look the other way' as to 'who is paying the piper', we are accelerating down a slippery slope.***

In my [February column](#), I said that advertisers may resist intervention but ultimately regulation of product placement seems inevitable in some form or other. Well, I have to admit that right now we are accelerating down a slippery slope that shows no sign of regulation. [Growth in product placement](#) is exploding and it is proliferating in all its forms. In videogames and the internet, it is now growing even faster than in movies.



In Ireland and Finland product placement is totally banned while in other parts of Europe it operates under restrictions. But in the USA, Australia and many other countries the feeding frenzy continues, especially in reality programs like 'American Idol' and 'The Apprentice' that are infested with it. In June, [the American CBS network television chairman declared](#) *"I think you're going to see a quantum leap in the number of products integrated into your television shows this year."*

Jonathan S. Adelstein, a member of the United States Federal Communications Commission seems to be a lone voice calling on his agency in May this year to toughen its requirements and expand its investigations into the practice of product placement. A deafening silence has been heard since.

Even in Britain and Germany where paid product placement has been "officially off limits", the [existing regulations are buckling](#) under the pressure of imported American programs that are full of product placements. When aired in Europe, it is difficult for the individual countries to sustain local regulations. Producers of imported programs have a competitive financial and pricing advantage and enjoy an extra source of revenue from product placement that is banned to the producers of local content.

### **Payola**

In the light of this accelerating proliferation of undisclosed payment for product placement, it is bizarre that in the USA in July this year, New York State Attorney General, Elliot Spitzer [accused Sony](#) of payola offences. He accused them of paying American radio stations to play the latest releases from its recording artists. For 45 years it has been against the law to bribe disc jockeys to promote particular records or to pay cash or gifts in exchange for airplay.

Spitzer's office collected evidence on potentially illegal promotion practices of not only Sony, but also other major record companies, independent promoters and several of the largest radio station groups. Sony agreed to pay \$US10 million to settle the allegations.

So what's different about payola versus product placement? Why is it perfectly OK for [McDonald's to pay rap artists](#) to mention 'Big Mac' in their lyrics but against the law for record companies to pay radio stations to play them?

Product placement usually does not involve making claims about the product but nor does payola. As Spitzer said in this latest Sony case: *"Our investigation shows that, contrary to listener expectations that songs are selected for airplay based on artistic merit and popularity, airtime is often determined by undisclosed payoffs to radio stations and their employees."*

Creation of awareness with payola or product placement is not 'message neutral'. People infer what is popular from what is prominent. Perceived popularity is a magnet; it attracts.

Yet, the main regulatory authority controlling product placement in the United States, the [Federal Communications Commission takes the curious view](#) that (even with children) if no actual claims are made about the product then "consumer injury from an undisclosed payment for product placement seems unlikely".

As Mark Twain said, *"Denial ain't just a river in Egypt."*

The ban on payola prevented the record companies from being able to generate unconscious bandwagon effects based on false perceptions of popularity. Product placement, like payola, warps the image that is projected of what is popular, so what's different?

Regulatory inconsistency is running rife. When regulation is confused and/or regulators 'look the other way', it greases the slippery slope. Soon everybody is tempted to have a go. "People strongly adjust their behaviour to that of the immediate social environment, without even being aware of it."<sup>1</sup>

### Precedent

Precedent builds on precedent. Undisclosed payments for promotional favours got an important toehold via supermarkets in the 1960's. It is now common practice for manufacturers to pay retailers for prominent spots such as end-of-aisle displays.

We are still a bit more sniffy about the [same practice spreading to bookstores](#) where publishers have effectively begun to pay retail chains to guarantee placement of their book titles at the front of the stores. But the precedent is there and in time 'bookstore payola' will be as universally acceptable as 'supermarket payola'.

So in the USA, accumulation of precedent is making product placement increasingly part of the accepted fabric of doing business. And this is having a [ripple effect on other parts of the world](#). Social immersion can warp perspective. As this tidal wave of product placement pours over the regulatory floodgates, it has its escalating consequences.

Just as corruption in third world countries is accepted as part of the fabric of doing business, we should not be surprised when record companies in the USA begin to play loose with the payola rule, especially when everybody else seems to be playing loose with analogous rules – even governments. In January, a [USA Today story](#) exposed that columnist Armstrong Williams was paid \$240,000 by the Federal Department of Education to tout the Bush administration's education policies in his writings and TV appearances. And twice in 2004, the (Government Accountability Office of the) USA Congress rebuked federal agencies for disseminating 'information disguised as news reports'.



So from '[communication in camouflage](#)', we move by increments to 'persuasion by proxy' and from there to '[cash for comment](#)'. What lies further down this slippery slope? Is there more to come? I think so and regulators must ultimately find it difficult to maintain a stance of 'look the other way'.

Numerous other forms of stealth communication are on the rise. ('Push polling' is one and I will address it in a future column.) Communication psychology is developing greater knowledge of unconscious effects and ways to exert influence without making the overt claims that the FCC seems to overly rely on to press its regulatory trigger.

"Gradually, individuals working in different disciplines...have been giving more and more emphasis to unconscious mental processes."<sup>2</sup> (See for example the [Journal of Consumer Psychology](#)<sup>3</sup>.) Aided by new developments in technology and methodology, psychological research is becoming ever more sophisticated in showing us how to tap into 'unconscious' influences.<sup>4</sup>

But for the moment, the world will continue down this slippery slope greased by a 'look the other way' approach to 'who is paying the piper' until there is a change in the mood of regulatory enforcement in the USA.

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<sup>1</sup> Ap Dijksterhuis, P. K. S., Rick B. van Baaren, Daniel H. J. Wigboldus (2005). "The Unconscious Consumer: Effects of Environment on Consumer Behavior." *Journal of Consumer Psychology* **15**(3).

<sup>2</sup> Tallis, F. (2002). *Hidden Minds: A history of the unconscious*. London, Profile Books.

<sup>3</sup> *Journal of Consumer Psychology* **15**(3), 2005

<sup>4</sup> Notwithstanding the exaggerated hype around neuromarketing.