



## Live Rugby Championship: New Zealand v Argentina

<b>Type of case</b>	Broadcast Standards
<b>Outcome</b>	Resolved
<b>Service</b>	Sky Sports Main Event
<b>Date &amp; time</b>	17 August 2024, 08:05
<b>Category</b>	Promotion of products, undue prominence
<b>Summary</b>	Live coverage of this international rugby match included promotional and unduly prominent references to a gambling product. Taking account of the editorial context, the circumstances and the steps taken by the Licensee, Ofcom considers the matter resolved.

### Introduction

Sky Sports Main Event is a subscription sports channel. The licence for the service is held by Sky UK Limited (“Sky” or “the Licensee”).

As part of the live coverage of an international rugby match between New Zealand and Argentina, the presenter introduced former New Zealand rugby player Israel Dagg during a break in play. He appeared at the side of the pitch, looking at one of the broadcaster’s cameras, and addressed viewers as follows:

*“Well, I’m just down here looking at all the live action on one of these cameras, and that leads me into this perfectly, live betting that is available for you on the TAB app. Over 63 and a half points scored by the All Blacks – they’ve scored plenty already – that’s paying \$1.82. Will Jordan, Caleb Clarke, both been on the scoresheet so far, one of those two players to score tonight, I think Will Jordan’s about \$2.10 and Caleb Clarke’s \$2.15. Take it, have a wee crack at it, maybe a six*

*try score out there tonight, there's plenty of options on the TAB app. So download it now, and make sure you enjoy the game, and always bet responsibly".*

Mr Dagg was identified by an on-screen caption as the "TAB HOST" and "ALL BLACKS FULLBACK 2010-2017". The odds he referred to also appeared on screen, alongside the text "TAB BET BREAK". Following this sequence, the presenter commented: "Oh, you're an absolute clown, Izzy. Give the cameraman his camera back, please! But thank you very much for those options".

Ofcom understands that TAB New Zealand ("TAB") operates a statutory monopoly for sports betting in New Zealand. Ofcom requested information from the Licensee about any commercial arrangements associated with the inclusion of the references to TAB in this programme. Based on the information provided, we considered that the programme raised potential issues under the following Code rules:

Rule 9.4: "Products, services and trade marks must not be promoted in programming".

Rule 9.5: "No undue prominence may be given in programming to a product, service, or trade mark. Undue prominence may result from: the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming".

We therefore requested comments from the Licensee on how the programme complied with these rules.

## Response

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In its response, Sky said that it had transmitted a live feed of an international rugby match between New Zealand and Argentina, provided by the host broadcaster Sky Sport, which is part of Sky Network Television Limited in New Zealand ("Sky Sport New Zealand" or "the host broadcaster"). Despite the similarity in their names, Sky clarified that the companies are not connected. It also confirmed that there were no contracts or agreements between itself (or any connected entity) and TAB (or any third party) in relation to the inclusion of references to TAB in the programme.

In addition, Sky said that it was not privy to any commercial arrangements between the host broadcaster and any third parties (including TAB). It was, therefore, "unable to verify whether the references contained within the programme constitute product placement", as defined in the Code. It acknowledged the possibility that "[t]he material may be in the programme as a result of a product placement arrangement between the programme maker and TAB". However, it reiterated that it had "not seen any relevant contracts held by Sky Sport New Zealand" to confirm this inference. However, Sky argued that, in this case, it made no material difference whether or not there was a product placement arrangement in place. Either way, the Code requires licensees to ensure that references to products, services or trade marks are neither promotional nor unduly prominent. Other rules relating to product placement did not apply because this was an acquired programme produced outside of UK jurisdiction.

The Licensee observed that this was an "issue...that has come up previously". It said: "[I]t should be noted by Ofcom, that there will be many occasions where a UK broadcaster will be unaware of

whether there are product placement deals in place from the overseas producer. Given the separation between producer and broadcaster when programmes are acquired, it is commonplace that a UK broadcaster would not be privy to this commercial information. We are sure this is understood by Ofcom and not thought to impair a broadcaster's ability to ensure the compliance of all types of acquired programmes[.]”<sup>1</sup>

Sky added that this issue was particularly relevant to live coverage of international sporting events, especially where the UK broadcaster is not itself the host broadcaster or provider of the feed, which it said presented “some difficult challenges”. Specifically, it pointed to the fact that the content may be made to the regulatory standards that apply in a different territory to the UK, as in this case with New Zealand. It said that its production team attempted to minimise any issues that arose as a result.

The Licensee also emphasised the importance of viewers being able to access this kind of content live. It stated: “Ofcom has long understood that broadcasters need to be afforded latitude when it comes to live event broadcasts given the immediate, on-air challenges that they pose”. It submitted that it is critical to be able to provide live coverage to viewers without delay, and “only the most harmful content should prevent this”. It added that a common sense approach was needed, where “the high standards of the Broadcasting Code are applied at all times” to non-live content, over which broadcasters have greater control, whereas more latitude is allowed for live content.

In relation to the specific content in this case, Sky said that it would “usually want to avoid airing this to [its] audience if at all possible”. The Licensee explained that its usual practice was to assess the running order of the programme provided by the host broadcaster and drop the feed for anything that raised a potential Code issue. It further explained: “Regrettably on this occasion, this sequence was missed when the producer assessed the running order, and therefore whilst we would have ideally dropped our live feed for this portion [of the programme], it was in fact aired live in error”. More generally, Sky pointed out that a running order is not always be provided by the host broadcaster: “These types of programme content lists may not be available, and it may not be possible to avoid material that is not ideal under UK rules in the live broadcast”.

Citing the “difficult live broadcasting environment”, Sky blamed “human error” for the oversight in this case, emphasising that there had been no intention to challenge any rules on its part. It confirmed that the sequence in question was removed from repeat broadcasts of the programme.

## Decision

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Reflecting our duties under the Communications Act 2003 (“the Act”), Section Nine of the Code requires that there is a distinction between advertising and editorial content. To ensure that such a distinction is maintained, the Code prohibits promotional references to products, services or trade marks, and limits the prominence that brands can be afforded in programmes. This is the case whether a brand reference in a programme results from a product placement arrangement or otherwise.

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<sup>1</sup> See *Singapore GP: Qualifying Highlights*, Channel 4, 17 September 2016, 17:30 and *Live Singapore GP: Qualifying*, Sky Sports F1 HD, 17 September 2016, 13:00, in Ofcom Broadcast and On Demand Bulletin, issue 359, 6 August 2018: <https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/bulletins/broadcast-bulletins/2018/broadcast-on-demand-bulletin-issue-359.pdf?v=323403>.

Ofcom took account of the Licensee's representations that this was a live feed of an international rugby match provided by the host broadcaster in New Zealand. Ofcom recognises the challenges UK broadcasters face when transmitting such content and the potential impact on the broadcaster's ability to make changes to output<sup>2</sup>. However, these circumstances do not absolve an Ofcom licensee of its responsibility to ensure that the content it transmits complies with the Code.

Ofcom reminds the Licensee that it is responsible for taking adequate steps to determine whether commercial arrangements engage the rules on product placement and therefore to satisfy itself that the content it transmits is compliant with the Code. However, in this case, Ofcom acknowledged the Licensee's point that whether or not the references resulted from a product placement arrangement had no material impact on compliance with the Code, given that this programme was not produced for UK jurisdiction (when different rules would apply in the case of a product placement arrangement).

In terms of the extent to which commercial references can feature in content, broadcasters need to carefully balance the interests of viewers with the need to maintain a clear distinction between advertising and editorial content.

To support such a distinction, Rule 9.4 requires that products, services and trade marks are not promoted in programming. Ofcom's Guidance to Section Nine of the Code<sup>3</sup> ("the Guidance") states: "[T]he extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed".

In Ofcom's view, the sequence in this programme featuring Mr Dagg clearly promoted TAB. Mr Dagg explicitly referred to "*live betting available for you on the TAB app*" and to there being "*plenty of options on the TAB app*". In addition to these general references to availability, he referred to the prices of specific odds that were available via the TAB app ("*that's paying \$1.82*"; "*I think Will Jordan's about \$2.10 and Caleb Clarke's \$2.15*"). There were also calls to action, where he encouraged viewers to make use of the TAB app ("*Take it, have a wee crack at it*"; "*download it now*").

Rule 9.5 requires that references to products, services or trade marks in programming must not be unduly prominent. Undue prominence may result from: the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or the manner in which a product, service or trade mark appears or is referred to in programming. The Guidance makes clear that, where such references appear in a programme, "[t]he level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

Ofcom considered that the inclusion of the references to TAB in the programme, as set out above, lacked editorial justification. The promotional manner in which TAB was referred to by Mr Dagg exacerbated the prominence given to this product in the programme.

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<sup>2</sup> See *Singapore GP: Qualifying Highlights*, Channel 4, 17 September 2016, 17:30 and *Live Singapore GP: Qualifying*, Sky Sports F1 HD, 17 September 2016, 13:00, in Ofcom Broadcast and On Demand Bulletin, issue 359, 6 August 2018: <https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/bulletins/broadcast-bulletins/2018/broadcast-on-demand-bulletin-issue-359.pdf?v=323403>.

<sup>3</sup> [https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/programme-guidance/broadcast-code-guidance/section9\\_may16.pdf?v=331487](https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/programme-guidance/broadcast-code-guidance/section9_may16.pdf?v=331487)

Within the UK, there is an established statutory and regulatory regime which restricts the promotion of certain products on the basis on that they are potentially harmful. For example, the Code (reflecting the requirements of the Act) prohibits the product placement of tobacco products and electronic cigarettes, among other things. The additional restrictions include a prohibition on product placement of gambling products in programmes produced under UK jurisdiction. Although this rule did not apply in this case, it demonstrates the additional protections that are afforded to viewers in relation to gambling products under the Code.

In this case, we took into account that the Licensee said that it would not normally have transmitted the sequence in question. Sky explained that its usual process involved assessing the running order for the programme, where this had been provided by the host broadcaster, and identifying anything potentially problematic for which it would be necessary to drop the feed. It said that “human error”, in the context of the “difficult live broadcasting environment”, resulted in this sequence not being identified and removed from the programme. Sky also confirmed that the sequence had been removed from repeat broadcasts.

We accepted that the live nature of this acquired programme provided some mitigation for the inadvertent inclusion of this content in the broadcast. However, Ofcom was concerned that, by failing to drop the feed at the appropriate point, the Licensee facilitated promotional and unduly prominent references to a gambling product that had no editorial justification. Nevertheless, taking into account the challenges associated with live coverage of international sporting events, the process the Licensee had in place to address such issues, and the action it took to ensure the content was not repeated, Ofcom’s Decision is that the matter is resolved.

**Resolved**