

## **PARTICIPATION TV PART 2: KEEPING ADVERTISING SEPARATE FROM EDITORIAL**

### **Response from Buongiorno Interactive TV**

*May 2008*

---

#### **Introduction**

The following response is from Buongiorno S.p.A (Buongiorno), the owners of Ostrich Media Ltd, who produce Quiz Call, the quiz TV content currently broadcast on Channel Five in the UK. It responds to OFCOM's consultation document of 9<sup>th</sup> April 2008, Participation TV part 2: Keeping advertising separate from editorial. This response is concerned solely with the parts of that consultation regarding Quiz TV and its reclassification from editorial to teleshopping.

In that document OFCOM defined three questions which it was seeking responses to, primarily concerned with the wording of revisions to the Broadcasting Code and the explanatory guidance notes. Buongiorno does not feel that these categories are adequate to encapsulate its response and has therefore taken the liberty of submitting a more open document than that specified by OFCOM.

This document responds to the OFCOM consultation on two fronts. Firstly, it highlights a number of arguments that, Buongiorno feels, would count against the reclassification of Quiz TV as teleshopping that have not been adequately addressed by the process so far. Quiz Call, under previous ownership, has submitted responses to earlier stages of this process but feels that the latest document introduces a number of new arguments that have not, as yet, been open to consultation.

The second part of this response focuses on Buongiorno's beliefs regarding the best way to progress the OFCOM process in the eventuality that quiz television *is* reclassified as teleshopping. Whilst Buongiorno believes that its arguments for the retention of editorial status are valid, it is also realistic as to the possibility of an alternative outcome and is keen to influence the way in which this outcome is realised on a practical basis. Buongiorno's core argument in this area is that, should a teleshopping classification be decided upon, then its introduction into the market should be tied to OFCOM's separate review into the RADA rules ('Rules on the Amount and Distribution of Advertising')

(OFCOM: Review of television advertising and teleshopping regulation) concerning the allocation of teleshopping minutage on both commercial and PSB channels.

## **1) Arguments against a reclassification**

Buongiorno sets out clearly below a number of good arguments against the reclassification of Quiz TV and also proposes a number of alternative reasons why the format should not be reclassified.

**a) ECJ ruling** - OFCOM's key argument for the reclassification of Quiz TV under the teleshopping banner appears to be based on a European Court of Justice judgement of 18<sup>th</sup> October 2007 regarding an Austrian Quiz TV channel's editorial status. The details of that case are spelt out in the OFCOM document and do not need to be repeated here, but Buongiorno feels that this case's wider application into the UK market is first, no longer necessary given recent changes to the industry, alternatively wholly inappropriate and disproportionate to the aims it is intended to achieve.

It must be noted that ECJ decisions of this type are not case law that is automatically to be applied in national courts across all member states. Indeed, in this case the decision consisted solely of a set of criteria handed to the Austrian courts on one, narrow area. On this basis, the use of this case to justify the wholesale reclassification of the genre in the UK without a separate ECJ judgement would be inappropriate and could be subject to further legal challenge in the ECJ. Furthermore, it was not made sufficiently clear how one should qualify a programme as teleshopping further leaving room for the likelihood of more challenges in the ECJ and non- uniformed applications.

**b) Consumer protection** – One of the key drivers behind the original OFCOM review was a general concern for consumer protection in the face of a series of Quiz television scandals about consumers being misled. Throughout 2007 there were a series of cases where PRS in television programmes was brought into question by the discovery of poor processes within providers leading to inappropriate consumer outcomes.

The regulatory and business landscape that allowed these cases to occur has now changed fundamentally and the provision of Quiz TV in particular, and programming featuring PRS in general, is now much more heavily controlled and policed, which has proved effective in removing concerns around consumer protection.

For example, on Quiz TV programming there are now clearer rules concerning the promotion of competitions, including the regularly updated display of information about pricing, the number of people currently calling the advertised premium rate number, the odds of being picked to play, the spoken and on screen display of non premium entry and the spoken promotion to viewers advising them to have a budget / daily limit and stick to it. Also there are clear stipulations around the games that can be played and further rules have been put in place regarding the back-end processes surrounding quiz TV telephone entries. These fair and robust back end processes have been fully audited both internally and externally by third parties and along with all aspects of Ostrich Media programming, are subject to permanent and ongoing regulatory audits.

These rules are now, in fact, significantly stricter than those in place around other 'mainstream' PRS activities that are not threatened with a teleshopping classification. Unfortunately, the fact of these changes to the regulatory environment has not been considered in the latest OFCOM consultation, potentially leading to inappropriate conclusions, particularly bearing in mind point (a) above.

**c) Other prize formats** – At this point in time there are other monetary participation formats that are still classed as editorial. The most obvious of this would be the TV gambling genre.

Buongiorno is aware that this genre is currently undergoing its own review as to the editorial status of its content (OFCOM - Proposal to re-classify TV gambling channels as teleshopping services). However, should gambling continue to be defined as editorial whilst Quiz TV were classified as teleshopping this would clearly be unfair discrimination against Quiz TV which, it is arguable, offers a significantly lower degree of consumer risk than higher stakes TV gambling.

Should this disparity in legislation occur then it would be argued that OFCOM was unfairly encouraging TV gambling over other forms of onscreen prize-based participation TV.

**d) Editorial value** – This point was made in the original response to the first part of this consultation but, in the absence of a justification for reclassification from the ECJ ruling, it still applies. There is significant editorial value in Quiz television and therefore its classification as teleshopping would seem counterintuitive, especially in an environment

where other question-based PRS activity was still classed as editorial based on a set of loosely defined criteria justifying its audience value.

The proof of editorial value lies in the viewing figures – at any time there are a significant proportion of views watching Quiz TV that do not enter the game. Indeed, our internal research suggests that over 90% of viewers regularly watch Quiz TV content without ever entering. Speaking from the experience of running the main Quiz TV provider in the UK, providing editorial value through the provision of new and engaging games, through professional presenters and quality sets is imperative in securing and maintaining audience share.

If the decision to watch Quiz TV were simply a commercial, rather than an editorial one, then the format would not contain many of the clearly editorial features that it does today.

**e) Commercial impact** – Whilst again a point previously raised to OFCOM, the commercial impact of a redefinition of Quiz TV as teleshopping would, in the absence of any other regulatory reviews, be significant. Under the current teleshopping minutage restrictions it is unlikely that Quiz TV could continue to be economically viable.

Since its launch on UK TV in 2000, Quiz TV has developed into a vibrant and growing part of the UK's television industry. Even after the commercial impact of recent regulatory changes it still supports a minimum of 100 employees directly and indirectly and it generates significant revenues for both PSB and commercial broadcasters which inevitably are used to fund other more mainstream programming.

## **2) Arguments for a postponement of implementation**

Buongiorno believes that the above arguments are sufficient to justify a significant re-evaluation of OFCOM's current position on re-classification. However, in the unlikely event that this is not considered by OFCOM to be the case, alternatively Buongiorno would also like to submit a secondary argument for consideration as part of the OFCOM consultation.

Buongiorno believes that, if Quiz TV is to be classified as teleshopping, then it is imperative that the industry be given an appropriate period of time to adjust to this new reality before the change was implemented. The length of time this would encompass would clearly be dependent on a number of factors, but Buongiorno believes that

introduction of a reclassification before 2009 would be both damaging to the television industry and also demonstrably unfair.

There are a series of arguments for this delay – a number for purely business reasons and one further, key point, regarding the potential for a business-friendly solution to the entire issue of reclassification.

**a) RADA rules review** - As stated in the arguments above, the reclassification of Quiz TV as teleshopping would, under the current RADA rules on teleshopping minutage, effectively end the economic viability of the format. The restriction on teleshopping on PSBs and commercial broadcasters would simply mean that there wouldn't be enough productive airtime available to generate the revenues required to justify the service.

With this in mind, Buongiorno respectfully asks that OFCOM consider delaying the implementation of any reclassification until its current review into RADA is complete and its outputs have been implemented. This review concerns the permitted minutage for teleshopping and could thus have a significant impact on the commercial outcomes of any reclassification.

Buongiorno is submitting its own response to this review supporting OFCOM's preferred option of a controlled expansion of teleshopping minutage. If this outcome were to come about and more teleshopping airtime were to be made available on PSBs and commercial channels, then the answer to the question of economic viability under teleshopping classification would be significantly different and could potentially remove some of Buongiorno's objections to the reclassification.

The timing of any decision or implementation of the RADA review is not clear from the initial consultation documents, but Buongiorno strongly feels that the implementation of these two reviews should be co-ordinated. Should the teleshopping minutage be extended, it would be appropriate for Quiz Call to be able to continue broadcasting seamlessly and without significant off-air time, albeit under a different classification. Any delay between the implementation of the Participation TV consultation and the RADA review would cause significant and unnecessary financial hardship for the organisation.

**b) Contractual issues** – A key consideration in any reclassification should be the existence of contractual relationships between companies such as Buongiorno and their broadcaster partners. The timetable for implementation should take into account that these existing commercial relationships will be fundamentally impacted by a

reclassification (whether or not new possibilities emerge under the RADA review) and sufficient time should be built into the process to take these factors into account.

Contracts such as those that exist between broadcaster and content provider cannot simply be unravelled at short notice and the implications of a regulatory shift such as is being proposed would take some time to consider and incorporate into business relationships.

**c) Changing content** – Depending on the outcomes of the different reviews mentioned above, there may be a need for Buongiorno and other content providers to fundamentally change their content output in order to remain as viable businesses. Should Quiz TV, for whatever reason, no longer be a viable format for Buongiorno, it would be necessary for the company to develop a range of new formats in permissible and viable sectors and this process would take some time. In order not to effectively destroy the short term economic viability of a range of businesses, OFCOM should look to offer an extended switch-over time for the outcomes of this consultation.

**d) Commercial impact** – Further to the above points, a negative series of outcomes to the relevant consultations and reviews would result in a significant economic impact on companies and individuals. To bring about this impact in a peremptory fashion would cause unnecessary economic hardship to a large number of employees, whereas a long term transition would open the opportunity for a more graduated shift.

## **Conclusion**

In summary, Buongiorno has levelled a series of arguments against the reclassification of Quiz TV, namely that:

- Justification on the grounds of the ECJ judgement is inappropriate;
- Reclassification on grounds of consumer protection fails to take into account the significant moves made by the industry in this sphere;
- Reclassification of Quiz TV as teleshopping would be discriminatory were Gambling allowed to remain as editorial;
- Quiz TV does in fact have true editorial value;
- The reclassification of Quiz TV as teleshopping could potentially have a major economic impact on broadcasters, individuals, programming budgets and the television industry.

However, in the event that reclassification does occur despite the above arguments, Buongiorno in the alternative has also offered a series of reasons why any implementation of a reclassification should be delayed:

- Reclassification should be synchronised with the implementation of any changes to the RADA regime;
- Time is needed to review and alter contractual arrangements with customers/employees;
- Time is needed to develop any appropriate content changes; and
- Time is needed for individuals and companies to align themselves with any potential new economic reality

Buongiorno believes that, should its arguments against reclassification fail to convince OFCOM of a need for a rethink, then, as a minimum, its arguments for delaying the implementation of a reclassification would be viewed in a sympathetic manner. The rapid and uncoordinated introduction of reclassification would be a significant blow to a large number of individuals, companies and not least of all consumers and this blow could be significantly minimised by the simple expedient of an understanding timeframe for implementation.