

Appendix

Case 1 – Television Programme “MaBelle Leo Diamond Special: Happy Moment with Diamond 2011” (MaBelle Leo Diamond 呈獻：與別不同的開心閃爍) broadcast on the HD Jade Channel of Television Broadcasts Limited (TVB) on 1 - 5 and 8 - 12 August 2011 at 10:33 pm

A member of the public lodged a complaint against the television programme “MaBelle Leo Diamond Special: Happy Moment with Diamond 2011” (MaBelle Leo Diamond 呈獻：與別不同的開心閃爍). The substance of the complaint was that –

- (a) the episode of 4 August 2011 introduced the exclusive products of a diamond brand and was not distinguishable from an advertisement; and
- (b) the showing or mentioning of the name of the diamond brand before and after the one-minute programme as well as the verbal and visual reminders, were more frequent than that in an advertisement, which was obtrusive to viewing pleasure.

BA’s Findings

In line with established practice, the Broadcasting Authority (BA) considered the complaint case in detail, including the recommendations of its Complaints Committee and the representations of TVB. The BA noted the facts of the case as set out below –

- (a) the diamond brand was identified as both the programme sponsor and the product sponsor of the one-minute programme series comprising 10 episodes (Series); and
- (b) the Series adopted the format of a drama with a simple plot revolving around a trainee diamond fairy, who delivered “Happy Moments” through diamonds to a family. The Series featured the product(s)/service(s) of the sponsor in each of the 10 episodes, including (i) shots of signboards and interior of the sponsor’s shops, gift sets and website bearing the brand’s name; (ii) close-up shots panning on the sponsor’s jewellery, either in gift box bearing the sponsor’s name

or displayed on mannequin head or in glass display closet in the sponsor's shops; (iii) the sponsor's exclusive incision technique "82-facet cut"; and (iv) various favourable remarks and recommendations on the jewellery accompanied by the shots on the product. The approximate aggregate duration of shots in each one-minute episode ranged from 10 to 27 seconds.

The BA, having regard to the relevant facts of the case, considered that –

- (a) as the sponsor had patented the "82-facet cut" diamond cutting technique, the frequent references to the diamond cutting technology within the Series appeared to have gone beyond the purpose of providing information about diamond and amounted to a promotion for the sponsor. In addition, the detailed descriptions of the design and the material of the sponsor's jewellery in the Series, presented side by side with the deliberate shots of the sponsor's products and services, had given undue favours to the sponsor and amounted to indirect advertising;
- (b) the extensive close-up shots of the sponsor's jewellery pieces throughout the whole series, including the mannequin head, could hardly be considered as incidental. The close-up shots were gratuitous and not clearly justified editorially. Together with the occasional appearance of the sponsor's brand name on its website and the gift boxes, its signboard and the favourable remarks, the Series had a noticeable advertising effect for the sponsor's jewellery. The prominent display of the sponsor's product in the Series was obtrusive to viewing pleasure; and
- (c) in light of the above, TVB was in breach of paragraph 1 of Chapter 11 of the Generic Code of Practice on Television Programme Standards (TV Programme Code) governing indirect advertising, which prohibited the mingling of programme and advertising material, and paragraph 10(a) of Chapter 9 of the Generic Code of Practice on Television Advertising Standards (TV Advertising

Code), which stipulated that exposure or use of the sponsor's products and services within programme should be clearly justified editorially, not obtrusive to viewing pleasure and not gratuitous.

Decision

In view of the above, the BA decided that TVB should be **seriously warned** to observe more closely the relevant provisions in the TV Programme and Advertising Codes.

Case 2 – Television Programme “Dolce Vita” (港生活·港享受) broadcast on the Pearl Channel of TVB on 4 August 2011 at 9:30 pm – 10:00 pm

A member of the public lodged a complaint against the television programme “Dolce Vita” (港生活·港享受). The substance of the complaint was that the segment on products of a commercial brand had served commercial purposes.

BA's Findings

In line with established practice, the BA considered the complaint case in detail, including the recommendations of its Complaints Committee and the representations of TVB. The BA noted the facts of the case as set out below –

- (a) the programme under complaint was a lifestyle programme and a commercial brand was clearly identified as a product sponsor of the programme; and
- (b) a 4.5-minute segment of a massage chair and an ambient purifier of the same commercial brand were featured one after another. There was detailed introduction of the features and functions of the products with close-up shots of different parts of the products and shots with the brand name visible.

The BA, having regard to the relevant facts of the case, considered that –

- (a) the introduction of trendy products and product placement in lifestyle programmes was not unacceptable. The consideration, however, should be whether the selection of the products to be featured and their presentation were clearly based on viewers' interest and not for advertising purposes. The shots showing the brand name of the products were not unavoidable and were gratuitous. The excessive coverage of the two products from the same brand in a single episode was conspicuous; and

- (b) the presentation of the products, including the shots showing clearly the brand name of the products and the favourable remarks of the hosts, was gratuitous. It could not be clearly justified by the editorial needs of the programme and that the overall effect of the segment amounted to advertising material. Therefore, TVB was in breach of paragraph 1 of Chapter 11 of TV Programme Code, which prohibited the embedding of advertising material within programme content, and paragraph 10(a) of Chapter 9 of the TV Advertising Code, which stipulated that the exposure or use of the sponsor's product within a programme should be clearly justified editorially, not obtrusive to viewing pleasure and not gratuitous.

Decision

In view of the above, the BA decided that TVB should be **warned** to observe more closely the relevant provisions in the TV Programme and Advertising Codes.

Case 3 – Television Programme “now Late News” (now 深宵新聞) broadcast on now News Channel of PCCW Media Limited (now TV) on 16 May 2011 at 11:00 pm – 11:30 pm

A member of the public lodged a complaint against the television programme “now

Late News” (now 深宵新聞). The substance of the complaint was that –

- (a) in the news item about the Consumer Council receiving various complaints in relation to the data roaming plans of certain mobile network service providers, it was misleading and unfair to a service provider (the concerned service provider) by showing its logo and one of its shops without showing the same for the other four service providers; and
- (b) another service provider, a company affiliated to now TV and its holding company, was named in the Consumer Council Report but no reference or related images of it were made or shown in the news report. There was a potential conflict of interest in the selection of the footage. The complainant indicated that he had lodged a complaint to now TV but no substantive response was received. now TV’s failure to investigate the complaint concerning conflict of interest of its programme was in breach of paragraph 8 of Chapter 9 of the TV Programme Code and paragraph 11 of the Preamble in Chapter 1 of the same Code.

BA’s Findings

In line with established practice, the BA considered the complaint case in detail, including the recommendations of its Complaints Committee and the representations of now TV. The BA noted the facts of the case as set out below –

- (a) the news item under complaint was about the Consumer Council Report on consumers’ complaints on data roaming services and its advice for users;
- (b) During the voice-over stating that mobile data roaming charges of different service providers might vary by as much as five times, there was a wide shot of the concerned service provider’s shop and a close-up shot of its signboard lasting a total of 9 seconds. However, it is noted that the relevant comparison

of data roaming charges in the Consumer Council Report did not involve the concerned service provider highlighted in the visual presentation; and

- (c) during the voice-over stating that some “unlimited” usage data roaming day-plans in fact might not cover audio and video streaming, there was a close-up shot of another service provider’s signboard and a wide shot of its shop lasting a total of 5 seconds. However, it is noted that the service provider highlighted in the visual presentation of this part of the news report was not the service provider identified in the Consumer Council Report which had imposed restrictions on audio and video streaming.

The BA, having regard to the relevant facts of the case, considered that –

- (a) regarding the news report that mobile data roaming charges of different service providers might vary by as much as five times, since the concerned service provider was not involved in the relevant comparison in the Consumer Council Report, highlighting the service provider concerned in the visual presentation might give audience an impression that it had levied the highest charges and was unfair to it;
- (b) regarding the news report that some “unlimited” usage data roaming day-plans might not cover audio and video streaming, since the service provider highlighted in the visual presentation was not the one identified in the Consumer Council Report to have imposed such restrictions, the visual presentation was unfair to that service provider;
- (c) taking into account the above, now TV was in breach of paragraphs 7(b) and 9 of Chapter 9 of the TV Programme Code, which respectively stipulated that pictorial representation of news should be carefully selected to ensure fairness and that the licensees should avoid misleading the audience in a way which would be unfair to those featured in the factual programmes; and

- (d) the complainant's allegation about the failure of now TV, being affiliated with one of the service providers named in the Consumer Council's Report, to respond to its complaint against potential conflict of interest was outside the scope of the relevant provision in the TV Programme Code which was concerned with potential conflict of interest of news presenters but not licensees.

Decision

In view of the above, the BA decided that now TV should be **strongly advised** to observe more closely the relevant provisions in the TV Programme Code.