

Ofcom Broadcast Bulletin

**Issue number 159
7 June 2010**

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Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 16 December 2009 and covers all programmes broadcast on or after 16 December 2009. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

Note: Programmes broadcast prior to 16 December 2009 are covered by the 2005 Code which came into effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The 2005 Code can be found at http://www.ofcom.org.uk/tv/ifi/codes/bcode_2005/.

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

From time to time adjudications relating to advertising content may appear in the Bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

Standards cases

In Breach

Connect the World

CNN International, 6 January 2010, 21:00

Introduction

CNN International broadcasts news, current affairs and business programming as well as documentaries on the cable, satellite and Digital Terrestrial Television (Freeview) platforms.

Turner Broadcasting System Europe Limited holds the Television Licensable Content Service (TLCS) licence for the broadcast of CNN International on both the cable and satellite platforms. On the Freeview platform, Turner Entertainment Networks International Limited holds the Digital Television Programme Service (DTPS) licence.

Turner Broadcasting System Europe Limited and Turner Entertainment Networks International Limited are both owned by the same parent company, and will both be referred to as “Turner” in this finding.

Connect the World is a news and current affairs programme. The programme contains a short segment called ‘Connector of the Day’, in which a well known figure is interviewed by the presenter and is also asked questions which have been submitted by viewers. The ‘Connector of the Day’ segment is sponsored by Skype.

A viewer was concerned that the ‘Connector of the Day’ segment included matters of current affairs and issues reported in the news and questioned whether it was appropriate for sponsorship.

On viewing the programming, Ofcom noted that the seven minute segment occurred 45 minutes into the programme. After a commercial break, a sponsorship credit was broadcast in which the voiceover stated: “*Connector of the Day is sponsored by Skype*”. The ‘Connector of the Day’ segment takes place in the same studio and is hosted by the same presenter, Becky Anderson, as the rest of the *Connect the World* programme.

The ‘Connector of the Day’ guest was Michael Steele, the Chairman of the US Republican National Committee. The segment began with background information about the guest and referred to his new book: “*Now Steele’s new book outlines his justifications for taking on the [US] President. Self-styled as a redeemer of conservative values, Michael Steele is our Connector of the Day*”.

During the interview, Mr Steele explained:

“My responsibility though is to galvanise the party, to get it focussed on the mission in hand which is the upcoming elections¹. The one’s we just finished for example in 09, the elections in Virginia and New Jersey for Governor², we were

¹ US Senate mid-term elections are due to be held on 2 November 2010.

² These elections were held on 3 November 2009.

very successful and it's because we were able to have our candidates take our principles, the things that we fundamentally believe as conservative Republicans and apply them to the various policies of the day."

The presenter later asked Mr Steele:

"Three leading Democrats we hear are now not seeking re-election in 2010³. What do you make of that and how does your party plan to take advantage of that?"

Mr Steele responded:

"These are mums and dads and blue collar workers who are taking the time to tell their elected officials to stop moving in a certain direction, to do things a certain way and I think when they feel that the elected officials aren't listening they respond. And I think that these individuals who've decided not to run for re-election realise it will be a very tough argument to make to the people back home."

One of the two viewer questions put to Mr Steele was:

"Is the 'everything Obama does is bad' approach really helpful. And what things has Obama done in the last year that you support?"

Mr Steele responded:

"I don't want people to think that Republicans automatically oppose everything the administration is doing. That is not the case. For example in the area of national security and foreign policy, he has turned the Republicans in the Senate in particular, to stand with him on the decisions that he's made with respect to the prosecution of the war in Afghanistan, and certainly with the recent bombing attempt at Christmas, to help sort of help lay out and make the case for the course he wants to take. So there are those opportunities for us to come together. There are those differences though, and people should not read that because we disagree or have a different point of view, that we don't want to work with the Administration. We do."

The second of the two viewer questions put to Mr Steele was:

"What is your package to re-establish the American Dream in the short term?"

Mr Steele responded:

"...What Republicans are saying right now is with respect to the economy, let's trust the instinct of the entrepreneurs out there who create the jobs. Seventy per cent of the jobs that are held and are created in this country are by small business owners. So let's trust them to grow us out of the recession. Let's not put our faith first in government programmes and creating government related jobs, but let's create private sector jobs that stimulate the economy and create that infrastructure that you need financially to move into the future. On healthcare for

³ Senator Chris Dodd, Senator Byron Dorgan and Colorado's Governor Bill Ritter all announced on 5 and 6 January 2010 that they would not be seeking re-election in November 2010.

example, we propose a host of issues that we think can complement the underlying concerns that Americans have with respect to cost. Tort reforms, small business pools, those types of things have been proposed but rejected. National security, again we've stood with the President in making sure that this country and the direction he wants to take and lead on national security is something that we achieve. So you're right, we've got to be in a position as a party to also put what we want to do on the table and that's what we're trying to do now."

Ofcom asked the broadcaster for its comments under Rule 9.1 of the Code, which states that news and current affairs programmes on television may not be sponsored.

Response

Turner said that:

"The segment format of the 'Connector of the Day' is explicitly not a news and current affairs format, even though it sits in a current affairs show. CNN invites guests for the segment who have no relationship with the immediate news agenda of the programme in which the segment is placed. The guests are asked to answer questions which have been posed by CNN's viewers, not CNN, and are selected so as to avoid any connection with current events. Information provided about the guest is factual information for context."

Turner continued that the Code does not prohibit a politician being featured within a sponsored programme. The broadcaster submitted that "It was explicit that the interview was in the context of a book [the guest] had recently published." CNN said that the segment did not contain news and current affairs: "there was no news of the day which was touched upon, nor did the segment discuss or reflect immediate recent events".

Turner added that "in the sequence of questioning, no questions posed by CNN and then the viewers touched on the news or immediate recent events, and throughout were framed in broad thoughtful and philosophical context."

Decision

Rule 9.1 of the Code prohibits news and current affairs programmes on television from being sponsored. This rule is directly derived from the requirements of the Audiovisual Media Services (AVMS) Directive⁴. It supports the important principle that news and current affairs must be reported with due accuracy and presented with due impartiality. A broadcaster's editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised.

The Code states:

"A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy."

In this case, Ofcom noted that during the interview clear references were made to recent news events, i.e.:

⁴ Article 3(f)(4) of the Audiovisual Media Services Directive states that: "News and current affairs programmes shall not be sponsored".

- the Republican's success at the elections which had occurred two months before on 3 November 2009; and
- the fact that three leading Democrats had just announced (within a day of this edition of *Connect the World*), that they would stand down at the next US Senate mid-term elections in November 2010.

Further, during his response to the first of the two viewer questions, Mr Steele referred to Obama's current policies on national security and foreign policy as well as the Republicans' support for those policies, i.e.:

"For example in the area of national security and foreign policy, he [President Obama] has turned the Republicans in the Senate in particular, to stand with him on the decisions that he's made with respect to the prosecution of the war in Afghanistan, and certainly with the recent bombing attempt at Christmas, to help sort of help lay out and make the case for the course he wants to take."

The second viewer question put to Mr Steele was, *"What is your package to re-establish the American Dream in the short term?"*, to which he referred to the Republican's current policies on the economy, healthcare, business and national security.

Ofcom disagreed with the broadcaster that "It was explicit that the interview was in the context of a book [the guest] had recently published." Ofcom noted that the book was only mentioned on two brief occasions during the segment, i.e. *"Steele's new book outlines his justifications for taking on the President"* and *"Have you had a response from Obama to your book yet?"*, to which Mr Steele replied, *"Not yet. In fact I'm very much looking forward to sitting down with the President at some point and discussing and talking with him..."*

While a politician may appear in a sponsored programme, discussions or topics covered cannot be about news, or feature explanation or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy. Further, it appeared to Ofcom that Turner had argued that the questions put to Mr Steele could not be construed as current affairs content because they had not been put to him by CNN directly, but by viewers. Irrespective of the source of material, it is principally the subject matter that determines whether content meets the Code's definition of current affairs.

In this case, Ofcom considered that Mr Steele was asked to provide by both the presenter, and by means of the questions submitted by viewers, his explanation and analysis of both President Obama's and the Republican party's current policies. The segment also contained discussion of the current news issue of the three leading Democrats who had just announced their intention not to stand at the next election.

Having taken these issues into account, Ofcom found the programme in breach of Rule 9.1 of the Code.

This breach will be held on record in relation to the following licences:

- TLCS 103 licensed to Turner Broadcasting System Europe Limited.
- DTPS 042 licensed to Turner Entertainment Networks International Limited.

Ofcom has significant concerns with Turner's compliance with Rule 9.1 of the Code. In light of this, Ofcom is requiring the broadcaster to attend a meeting to discuss

these concerns. Further, Ofcom is putting the licensee on notice that any further breaches of Rule 9.1 will be taken extremely seriously and in such circumstances Ofcom may consider further regulatory action.

Breach of Rule 9.1

In Breach

Dubai World Cup Special

Channel 4, 27 March 2010, 17:15

Introduction

Coverage of this horse racing event was sponsored by the emirate of Dubai. A complainant questioned whether references within the programme to the race venue, the Meydan Grandstand, and Dubai generally, complied with the Code.

Ofcom viewed the programme and noted that it included a pre-recorded item discussing the venue. Comments included:

- “essentially a world class sporting venue encased in unparalleled luxury”; and
- “all in all Sheik Mohammed’s¹ vision to create the ultimate venue for horseracing”.

The item focussed on a hotel at the race venue, showing its facilities. The hotel was described as:

- “a grand design par excellence, an architectural feast”; and
- “a symphony of dazzling lines, glistening glass and endless curves”.

In relation to Dubai, the presenter stated during the opening ceremony:

“... throughout the ceremony there’s been allusions to the local way of life - the customs and traditions of the past, but fully embracing the future of the modern Dubai. Dubai’s had a difficult twelve months but this is a defiant Dubai tonight. Hope has been rising into the night sky, offering the warm welcome for which the country is known – welcome to the world with hands outstretched”.

Ofcom sought the broadcaster’s comments under the following rules:

- Rule 9.5 – “There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests...”

Response

Channel 4 advised that, as with all of its horse racing festival coverage, the programme provided significant and varied build-up to the big race. The vast majority of the programme featured analysis of the races, the horses and their connections. It covered interviews with key players in the race and, where applicable, racing patterns. Again in common with all its festival coverage throughout the year, the programme also looked at stories of interest around the event.

Channel 4 said that its Compliance Department provided detailed compliance advice to the person with editorial responsibility for the programme. In particular, that care was needed in relation to how references to the location were made in the programme. Channel 4 considered that the significance of the race internationally, the intrinsic interest of the new location and modern approach to racing would be

¹ Sheik Mohammed is the Ruler of Dubai.

sufficient enough editorial justification to look at the features of the venue in the context of the coverage of the event. However, any references about the venue would need to be contextualised within the actual event and avoid superlatives.

Channel 4 considered that the vast majority of the programme was acceptable but that limited aspects were, in its view, problematic. In particular, the item about the hotel adopted a tone, style and use of language that was not appropriate and did not integrate editorially with the rest of the event coverage.

Channel 4 assured Ofcom that it would be speaking to the relevant department to reinforce the importance of ensuring all aspects of advice are followed to ensure this type of problem is not repeated. In particular, to ensure that production timeframes allow the compliance department to view all pre-recorded packages for inclusion in live programming prior to transmission.

Decision

We note Channel 4's view that certain elements of the programme were incompatible with the Code.

The Code's rules for sponsored programmes require that sponsorship arrangements must not influence the editorial content of sponsored programmes. Broadcasters must take care to ensure that sponsored programmes are not - or do not appear to be - distorted for commercial purposes. Unless they are non-promotional, incidental and justified editorially, references to the sponsor should not feature in sponsored programmes (Rule 9.5).

In this case, the programme sponsor, Dubai, was the emirate hosting the racing event that was the focus of the programme. While we accept that such arrangements are not necessarily incompatible with the Code, they do present particular issues in terms of complying with Rule 9.5. In such cases, the likelihood of a programme referring to the sponsor is significant and therefore extra care is needed to ensure any such references are non-promotional, incidental and justified editorially.

We consider that the comments made during the opening ceremony and to the venue, the Meydan Grandstand, amounted to references to the sponsor. In reaching this decision we noted that (as stated during the programme) the venue itself was "a vision" of Sheikh Mohammed, the Ruler of Dubai. We therefore judged that the venue was an interest of the sponsor.

The pre-recorded item about the venue lasted over two minutes and adopted a style and tone that, in Ofcom's view, had more in common with an advertising promotion than content usually associated with horse racing coverage. The emphasis of the piece was the hotel, with extended shots of, and information on, the rooms, pool and restaurant included.

The references made to Dubai during the commentary accompanying the opening ceremony appeared to be contrived and promoted a positive view of the country.

We conclude that references to the sponsor within the programme were not incidental and were promotional. The programme was therefore in breach of Rule 9.5

Breach of Rules 9.5

In Breach

Sponsorship of The Real Sports Phone-in

Real Radio Wales, 1 and 2 February 2010

Introduction

On several occasions during 1 and 2 February 2010, Real Radio Wales broadcast the following sponsorship credit for its interactive phone-in programme:

“The Real Sports Phone-in with Trade Centre Wales, the UK’s cheapest cars, Junction 43 the M4, with up to 1,000 cars in stock”.

Ofcom received a complaint from a listener who believed the claim that the sponsor sold *“the UK’s cheapest cars”* was unsubstantiated and potentially inaccurate.

Rule 9.3 of the Code states that: “Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.”

Section 2 (General Rules) Rule 4.1 (Superlative claims) of the BCAP Radio Advertising Standards Code (“BCAP Code”) states that “Particular care is needed so that superlative claims do not mislead. Measurable criteria e.g. ‘the cheapest’, must be confirmed.”

Ofcom therefore sought comments from the broadcaster with regard to these rules.

Response

GMG Radio, which holds the licence for Real Radio Wales, said that “a wrong though genuine interpretation by a company employee directly caused an incorrect sponsor credit ... to be aired.”

The original script for the credit was cleared for broadcast by the Radio Advertising Clearance Centre (“RACC”)¹ but not aired. The script was later amended. The broadcaster believed that “an incorrect assumption of RACC clearance [of the amended script] by an experienced employee was responsible for allowing the subsequent sponsor credit to feature on air without appropriate checking.” It added that, due to his experience “and the previous untarnished compliance record of the station’s sponsorship department ... the error was genuinely not noticed.”

The amended sponsorship credit therefore went to air on 1 February 2010, on the assumption that it remained consistent with the original script, which had been approved for broadcast. In fact, the revised script had not kept specific script lines required by the RACC.

GMG Radio said that, the following day, the RACC contacted the station, as a competitor had queried the claim that had been broadcast (i.e. “the UK’s cheapest cars”). The sponsorship credit was therefore removed from air by the broadcaster.

GMG Radio apologised for this “unplanned if avoidable human error” and has since tightened its sponsorship team’s procedures by requiring all amendments to be

¹ The RACC is the industry clearance body responsible for the approval of advertisement and sponsorship credit scripts prior to broadcast.

approved by a senior member of staff. The broadcaster was therefore confident that this error would not recur.

Decision

Ofcom noted GMG Radio's swift action to remove the sponsorship credit from air as soon as it became aware of the issue, and the extra measures it subsequently put in place for approving script amendments, to minimise the likelihood of recurrence. Further, Ofcom accepted that the broadcaster had not intended to mislead listeners.

Nevertheless the sponsorship credit broadcast on 1 and 2 February 2010 contained the superlative claim that Trade Centre Wales offered "the cheapest cars". It is a requirement of the Advertising Code that broadcasters should be able to prove such claims with measurable criteria prior to broadcast. However, when Ofcom asked the broadcaster for comment, it was unable to provide appropriate evidence to substantiate the claim.

Ofcom therefore considered that particular care had not been taken by Real Radio to ensure that the superlative claim did not mislead listeners, in breach of Rule 4.1 of the BCAP Code.

As the sponsorship credit had not complied with the requirements of the BCAP Code, its broadcast was also in breach of Rule 9.3 of the Code.

Breach of Section 2 (General Rules) Rule 4.1 (Superlative Claims) of the BCAP Code

Breach of Rule 9.3 of the Code

In Breach

Lord of the Ring Promotion

Sky Box Office, 3 April 2010, 19:00

Introduction

Sky Box Office is a pay-per-view channel which allows customers to pay to view movies and special events such as boxing or wrestling matches.

Under Ofcom's rules, television broadcasters are able to place items in their schedules promoting their own programmes and other 'broadcasting-related services'. These items are known as cross-promotions and are for most purposes regulated under a specific Ofcom Cross-promotion Code ("the Cross-promotion Code")¹ and, in respect of their content, under Ofcom's Broadcasting Code.

Since cross-promotions seek to promote broadcasting-related services, they may contain claims about those services to provide information to the viewer so they can make an informed decision. Therefore, where relevant, cross-promotions have to comply with the rules in the BCAP Television Advertising Standards Code ("the TV Advertising Code")². In particular Ofcom has stated publicly that this will be the case where, for instance the issue of misleading material arises.

The *Lord of the Ring* promotion featured a package of fights available to view on Sky Box Office on 3 April 2010. It included short clips of the boxers competing in the fights. A voiceover and text gave information regarding all the fights that would be included in the event package, which could be purchased. One of the fights featured was between Lee McAllister and Ben Murphy.

A viewer objected that he paid to view the package but that the McAllister/Murphy fight was not featured as advertised.

We sought Sky's comments on the complaint under Rule 5.1.1 of the TV Advertising Standards Code, which states that:

"No [self promotion]... may directly or by implication mislead about any material fact or characteristic of a product or service".

Response

Sky explained that the footage of McAllister vs. Murphy was erroneously used in the promotion after the fight had been cancelled (on or around the 17 March 2010). Sky

¹ The Cross-promotion Code is available at:
<http://www.ofcom.org.uk/tv/ifi/codes/bcode/crosspromo/>

² BCAP is the Broadcast Committee of Advertising Practice. BCAP is the code administrating arm of the Advertising Standards Authority (ASA). Ofcom has contracted out its advertising control function to the ASA. Ofcom has put on record that it will apply the TV Advertising Code to cross-promotions where appropriate – see paragraphs 7.27 and 7.28 of the Ofcom Regulatory Statement *Review of the cross-promotion rules*, available at:
<http://www.ofcom.org.uk/consult/condocs/promotion/statement/statement.pdf>

apologised for this mistake and stated that it was never its intention to mislead viewers of any Sky channels, especially in sports events such as this.

Sky explained there was an extensive promotional campaign both on and off air for this high profile boxing event. The promotion in question, which was on air for one week leading up to the event, was the only incorrect piece of content that mentioned the McAllister/Murphy fight.

The mistake, due solely to human error, meant that the cancellation of the fight was unfortunately not picked up during the creation of the promotion, or during its seven day transmission period.

Sky said that it sincerely regretted this error. It in no way intended to mislead viewers as to the boxing matches that were included in the pay-per-view event of that evening. Sky extended its sincere apologies to the complainant and offered a full refund.

Sky stated that it had reiterated, to its Sports editorial and creative teams, the need to ensure that all promotions are accurate: if there are changes in any undercard fights that these are reflected in up to date, promotional activity.

Decision

We note Sky's admission that the promotion contained incorrect information and also welcome its offer to refund the complainant.

When promoting the availability of pay-per-view content, we expect broadcasters to have adequate compliance procedures in place to ensure material does not materially mislead viewers. In this case, a boxing match was advertised as being available to view over two weeks after it had, in fact, been cancelled.

We expect the broadcaster to take greater care in future to ensure such material promoting content it is inviting viewers to pay for is accurate and up-to-date.

The promotion was in breach of Rule 5.1.1 of the TV Advertising Standards Code.

Breach of Rules 5.1.1 of the BCAP Television Advertising Standards Code

In Breach

Advertisements for 4EverGlazing

Buzz Asia (Greater London), 4 December 2009, 17:41 and 7 December 2009, 06:28

Introduction

Buzz Asia is a music-led radio service aimed at young Asian adults in London.

During routine monitoring of material broadcast on 4 December 2009, Ofcom noted that, following a brief station ident, the presenter said:

“...It’s coming up to quarter to six o’clock already on this ... Friday. Have you made up your mind what you’re gonna be doing tonight? Coming your way I’ve got something new from Chipmunk – good old ‘Look for Me’ – love that tune. Also, 4EverGlazing have a fantastic offer currently on – Buy 7 windows, 1 opening, fully fitted from one three nine nine. Call 4EverGlazing today on [telephone number] or log on to [web address] – that’s [telephone number] or log on to [web address]. Hold tight for Chipmunk, but right now...”

Similar material was also broadcast on 7 December 2009.

Buzz Asia confirmed that these promotions for 4EverGlazing were presenter-read advertisements.

Ofcom therefore asked Buzz Asia for its comments with regard to Rule 10.2 of the Code, which states:

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate.”

This rule is designed to ensure transparency with the audience and that listeners are aware when they are being sold to (as opposed to, for example, hearing a presenter’s personal endorsement).

Response

Buzz Asia acknowledged that “the physical separation between the programme and the presenter read advertisement was not as overt as perhaps it could have been”, but noted that no listeners had complained to Ofcom concerning the matter.

The broadcaster recognised that “the object of the Code and the interpretation of the principles which underscore Rule 10.2 is to ensure that listeners are not confused between editorial (programming) and advertisements.” It added that the presenter “delineated the advertisement with a short phrase at the entry of the advertisement (“also” on the 4 December and “Don’t forget” on the 7 December) and at the exit of the advertisement (“Hold tight for Chipmunk...” on the 4 December and “Good morning” followed by a time check on the 7 December).”

Buzz Asia believed that listeners would have been in no doubt about when they were listening to an advertisement, especially as “it contained a clear offer and contact details and was branded clearly in the client’s name.”

The broadcaster therefore believed that, while separation “may have been oblique”, it was adequate “when taken in context” and would have “created the required separation within the minds of the listeners”, satisfying the requirements of Rule 10.2 of the Code.

Decision

To achieve the clear separation of radio programming and advertising that is required by the Code, there are generally two issues to consider:

- Providing a significant ‘barrier’ – e.g. a pause, a jingle, an ident, an obvious change in presentation style etc. The most appropriate choice of ‘barrier’ depends on the circumstances of the particular case (i.e. the nature of the programming in or between which an advertisement is placed); and
- Ensuring that an advertisement does not sound like programming. This is generally achieved by using a different presentation style, whether pre-recorded or presenter-read. If the advertisement is presenter-read, not deviating from the ad script and/or placing the ad centre-break may assist clear separation.

Ofcom considers that Buzz Asia’s presenter provided no significant barrier between the advertisements and the programming around them. In addition, her presentation style remained consistent throughout the advertisements and her adjoining comments, which were clearly editorial (i.e. programming).

Ofcom does not therefore accept Buzz Asia’s argument that “listeners would have been in no doubt about when they were listening to an advertisement.” We consider that listeners were likely to have been confused as to whether the references to 4EverGlazing were programming or advertising.

In each instance, the broadcaster had therefore failed to ensure that the advertising and programming elements of its service were kept separate, in breach of Rule 10.2 of the Code.

Breaches of Rule 10.2

In Breach

Elite Days

Elite, 31 March 2010, 15:00 to 16:00

Introduction

Elite is owned and operated by Prime Time TV Limited ("Prime Time TV" or "the Licensee"). The channel broadcasts interactive daytime and adult-sex chat programmes that are freely available and without mandatory restricted access. It is located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on Channel 911. Viewers can contact the onscreen female presenters via a premium rate telephone or text number ("PRS"). Generally the female presenters dress and behave in a provocative and/or flirtatious manner.

A viewer was concerned that during this daytime output the presenter was shown continually thrusting her body and mimicking sexual intercourse and this was inappropriate for the time of transmission.

Ofcom viewed the material broadcast between 15:00 and 16:00 and noted that the presenter was wearing a skimpy gold lamé thong swim suit. During the broadcast she was shown sitting on a sofa facing the camera and lying on her side. While in these positions the presenter spread her legs wide apart for prolonged periods of time and she repeatedly gyrated her pelvis. The presenter also repeatedly stroked and caressed the top of her thighs and breasts, and pinched her nipples.

Ofcom asked the Licensee for its comments on the broadcast in respect of Rule 1.3 of the Code (children must be protected by appropriate scheduling from material that is unsuitable for them).

Response

Prime Time TV said that it did not feel that the material "was in any way unsuitable for an audience of any age" and if a child were to view this material it "would in no way cause them any damage or harm". It stated that there were "no instances of overly-provocative activity" during this broadcast and "while she [the presenter] may have been moving we do not feel this constituted miming sexual intercourse". The Licensee referred to factors such as the labelling of the channel as 'adult' and its situation in the 'adult' section of the EPG, and both the audience expectation of the channel and the "remote chance of viewers coming across the channel/content unawares". It said that "stronger material is widely available in daytime soaps and music television channels throughout the day".

The Licensee continued that "only an adult could look at this material and, using their imagination, make any sort of sexual connection, just as they potentially could by looking at any woman in a bikini, lingerie or fully clothed". It therefore said that the material was not in breach of Rule 1.3 of the Code.

The Licensee said it has taken all the necessary steps in training its performers, producers and production staff to ensure the highest possible production values and compliance.

Decision

Rule 1.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number of children in the audience taking into account such factors as school time; the start and finish time of the programme; the nature of the channel; and, the likely expectations of the audience for a particular channel or station at a particular time and a particular day. In particular, it should be noted that the watershed starts at 21:00 and ends at 05:30.

Ofcom has made clear in previous published findings¹ what sort of material is unsuitable to be included in daytime interactive chat programmes. Some of these findings involved channels licensed to Prime Time TV. Presenters of daytime chat services should not at any time appear to mimic or simulate sexual acts before the watershed or behave in a sexual manner, by for instance adopting sexual positions. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters, including the Licensee, in August 2009.

In Ofcom's view the material shown in this broadcast was clearly unsuitable for children. We do not agree with the broadcaster's view that this was equivalent to "...looking at any woman in a bikini, lingerie or fully clothed". During this broadcast the female presenter, who was wearing very skimpy clothing, was shown on a sofa in sexually suggestive poses for prolonged periods of time. In particular, she was shown sitting down facing the camera and lying on her side, and in both positions she had her legs wide apart. While in these positions the presenter behaved in a sexual manner by repeatedly gyrating her pelvis as though, in Ofcom's opinion, miming sexual intercourse. During this time she also repeatedly touched and stroked her body, including her breasts and the top of her thighs in a sexually provocative manner. We concluded that this content had no editorial justification for broadcast at this time. Its purpose was clearly sexual stimulation with the aim of attracting PRS income and was not suitable to promote daytime chat. Further, contrary to the broadcaster's assertion, the material in this instance was stronger than content broadcast in daytime soaps and videos shown on pre-watershed music channels (because, for example, the shots of the presenter here were more prolonged and sexually provocative, and were not part of an editorial narrative).

Given the sexual nature of the content, the location of the channel in the 'adult' section of the EPG and its scheduling between 15:00 and 16:00 were not sufficient to

¹These include: Tease Me: Earlybird, Tease Me TV (Freeview), 25 January 2010, 07:15 Finding in Bulletin 158 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb158/; Tease Me: Earlybird, Tease Me TV (Freeview), 15 February 2010, 05:30 in Bulletin 158 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb158/; The Pad, Tease Me, 26 February, 11:45 and The Pad, Tease Me 3, 27 February 2010, 11:45 Findings at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/; Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 Finding all in Bulletin 157 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/; The Pad, Tease Me 3, 20 August 2009, 12:00 Finding in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00 Findings in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; Party People, Get Lucky TV 29 November 2009 Finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; Elite Days, Elite, 4 and 25 November 2009 Findings in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; and Elite Days/Elite TV, 10 July 2009 Finding in Bulletin 144 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/.

provide adequate protection to prevent children from viewing this material. Ofcom has repeatedly made clear that the location of a channel in the 'adult' section of the Sky EPG, available without mandatory restricted access, does not in itself provide adequate protection to under-eighteens from inappropriate material shown on daytime chat channels². Therefore this unsuitable content was not appropriately scheduled.

The material was therefore in breach of Rule 1.3.

Breach of Rule 1.3

² The Pad, Tease Me, 26 February, 11:45, The Pad, Tease Me 3, 27 February 2010, 11:45 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/, Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 all in Bulletin 157 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/; The Pad, Tease Me 3, 20 August 2009, 12:00 in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; The Pad, Tease Me 6 November 2009, 12:00 and 14:00 in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; Party People, Get Lucky TV 29 November 2009 Finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; Elite Days, Elite, 4 and 25 November 2009 Findings in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; Top Shelf TV, 17 September 2009, 16:45 Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; The Pad 'Tease Me 2', 20 March 2009 Finding and Note to Daytime and Adult Sex Chat Service Broadcasters in Bulletin 137 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/; Chat Café, LA Babes, 25 February 2009, 13:00 Finding in Bulletin 136 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb136/.

In Breach

Reference to website address

Television X (Freeview channel 93), between 10 and 15 March 2010, 03:00 to 23:00

Introduction

Television X is an 'adult' channel located on the Freeview platform (channel 93). It is operated by Portland Enterprises (CI) Limited ("Portland" or "the Licensee"). Between 03:00 and 23:00 the channel broadcasts, without mandatory restricted access, a static interactive information page which provides viewers with details of how they can register for subscription or pay-per night 'adult' services that have mandatory restricted access. By clicking on the yellow button on the remote control viewers can access another information page, also broadcast without mandatory restricted access, that includes some of the terms and conditions of these services ("the terms and conditions page"). When on this page viewers are directed to go to a particular website for the full terms. Between 23:00 and 03:00 the channel transmits both 'free-to-air' (i.e. without mandatory restricted access) promotional trailers to encourage viewers to register for subscription or pay-per night services, and also 'adult sex material' that can only be broadcast under mandatory restricted access.

Ofcom received two complaints from viewers who said that the terms and conditions page, accessed by using the yellow button, directed viewers to a website address that contained sexually explicit content equivalent to the British Board of Film Classification ("BBFC") of R18 (i.e. hard core pornographic) material. On viewing the terms and conditions page complained of, Ofcom noted that it displayed the website URL "www.televisionx.com". Ofcom visited this website address and found that it contained images of a strong sexual nature equivalent to BBFC R18-rated material ("R18-rated equivalent material") which could be readily viewed without appropriate protections. Although this R18-rated equivalent material was not broadcast on-air, Ofcom was concerned that it appeared on a website that was referred to on screen by an Ofcom licensed service freely available without mandatory restricted access between 03:00 and 23:00.

Ofcom asked the Licensee to provide formal comments in relation to the reference of this website under Rule 2.1 (generally accepted standards) and 2.3 (offensive material must be justified by context) of the Code.

Response

Portland said that regrettably a reference to the URL www.televisionx.com was included on the terms and conditions page on its service Television X (Freeview channel 93). It apologised for this error and "any regrettable consequences in relation to the Code that may have arisen".

It stated that the terms and conditions page "is used to indicate contractual terms of subscription to the channel as retailed by Top Up TV¹". The wording on the page was created for the benefit of Top Up TV's relationship with consumers and was written by Top Up TV. Portland explained that despite the wording being approved by Top Up TV and Portland's sales manager, a reference to the website

¹ The digital TV service that allows viewers to access pay channels on Freeview

www.televisionx.com was used instead of the correct reference to www.televisionxnow.co.uk, which is a website that contains no R18-rated equivalent material. It said that “unfortunately this mistake was not spotted by Portland or Top Up TV at the time”. The Licensee accepted that this error “would appear to be in breach of the Code”.

Portland stated that the inclusion of the website address www.televisionx.com on the terms and conditions page “was certainly inadvertent rather than deliberate”. It also highlighted that the reference was placed in “an extremely obscure part of the interactive application” and in context the reference invited potential customers to view the full contractual terms and conditions rather than R18 content. It informed Ofcom that “all relevant staff members of Portland and Top Up TV have been reminded of the importance of ensuring that unencrypted references to URLs containing R18 strength content are avoided at all times, in all parts of the channel and ancillary services connected to it”.

Decision

The content of websites is not broadcast material, and therefore not subject to the requirements of the Code. However, any references to websites or URLs made on air, which can be through an interactive element of a service (i.e. the yellow button), are broadcast content. Ofcom therefore has the duty and the power to regulate such references under the Communications Act 2003. Ofcom licensed services should in no circumstances promote or direct viewers to ‘adult’ websites which contain R18-rated equivalent material if such content can be accessed without appropriate restrictions in place. Therefore such references must not be broadcast on a service without mandatory restricted access.

Code Rules 2.1 and 2.3 apply to references to websites, promotional or otherwise, made on air because they are broadcast content. The issue in this case was whether the website address was suitable to be referred to on a licensed television service that was broadcast without mandatory restricted access, and so complied with these rules. When accessed – merely by clicking a button on a warning page to confirm that the user was over 18 – the www.televisionx.com website contained images of R18-rated equivalent material. This included explicit images of a woman inserting a dildo. This website did not require prior registration to view and therefore the reference to its URL on the terms and conditions page, which clearly directed viewers to the website, was of serious concern to Ofcom. Ofcom considered that the broadcast of this website address was a breach of generally accepted standards because of the unprotected and explicit sexual material it led to. In Ofcom’s opinion, given that this website reference was broadcast between 03:00 and 23:00 on a Freeview service without mandatory restricted access, its broadcast was not justified by the context.

Ofcom therefore concluded that the reference to www.televisionx.com, as broadcast on the terms and conditions page of the service Television X, via the yellow button, was in breach of Rules 2.1 and 2.3 of the Code.

Breaches of Rules 2.1 and 2.3

In Breach

Retention of recordings

Rocks TV, 11 April 2010

Introduction

Rocks TV is a teleshopping channel that specialises in the sale of precious metal and gemstone jewellery. It is broadcast on the Sky digital satellite platform.

Ofcom has contracted out its main duties to regulate broadcast advertising to the Advertising Standards Authority (“the ASA”). The ASA received a complaint about an edition of Rocks TV. In order to consider the complaint, the ASA requested a recording of the relevant output from the broadcaster. Rocks TV was unable to provide the requested recording and so the ASA referred the matter to Ofcom for consideration of a possible breach of the broadcaster’s licence conditions.

TLCS licence holders (such as Rocks TV) are required, under the terms of their licence, to keep recordings for 60 days after transmission of all of their output. If requested by Ofcom (or another body to which Ofcom has contracted out its regulatory duties, such as the ASA), Licensees are required to provide such recordings “forthwith”. These requirements are set out in Condition 11 of their broadcast licence (as issued by Ofcom).

Ofcom sought Rocks TV’s formal comments in relation to its failure to retain recordings of its output and therefore its inability to meet the ASA’s request.

Response

Rocks TV explained that since receiving Ofcom’s request for formal comments, it had been able to locate a recording of the requested material and had provided it to the ASA so that it could investigate the complaint. This recording had not been secured from Rocks TV’s own compliance recording system, but from one of its competitors. Rocks TV apologised that it had not been able to provide the recording, in the first instance, from either its primary or back up recording system.

Rocks TV explained that it had contracted out its main requirements to record and keep output to a third party who had failed to record the material on this occasion. It said the third party contactor had since confirmed that full compliance recording and retention systems were now in place. Rocks TV said that recent random testing of the third party’s recording and retention system has proved successful.

Rocks TV said that it was conscientious in complying with its licence obligations and hoped Ofcom would take its previous record of compliance as a longstanding licence holder into account.

Decision

A broadcaster is required to comply with all the conditions in its licence. In this case Rocks TV was unable to provide the ASA with a recording of its output when requested. This was because Rocks TV did not have the appropriate systems, and checks, in place to retain full recordings for all of its output.

While Ofcom notes that Rocks TV was able to eventually provide a recording of its output (thus enabling the ASA to consider the complaint), the recording was not provided “forthwith”. Further, this recording was provided by a competitor and not Rocks TV’s own “back up” recording system, which had failed on this occasion.

Ofcom acknowledges the licensee’s good compliance record to date. However, this is a serious and significant breach the licence obligations and will be held on Rocks TV’s compliance record.

Breach of Licence Condition 11 (retention and production of recordings)

Fairness and Privacy Cases

Not Upheld

Complaint by Mr Shaun McCarthy

Traffic Cops, BBC1, 12 November 2009

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

BBC1 broadcast an edition of its series *Traffic Cops*, which looked at the work of South Wales Police officers and included footage of a head-on collision on the M4 motorway.

Mr Shaun McCarthy, who owns a limousine hire company and who was one of the drivers involved in the accident, was shown being questioned about the accident by the police. His limousine was also shown in the programme and although its distinguishing markings were largely obscured, footage of the side of the vehicle revealed, albeit briefly, the company's name, logo and a telephone number. Towards the end of the programme, Mr McCarthy was shown being told by the police that he was being reported for careless and inconsiderate driving and being cautioned.

Mr McCarthy complained to Ofcom that his privacy was unwarrantably infringed in the making and broadcast of the programme as broadcast.

Ofcom found that:

- Mr McCarthy had a limited expectation of privacy in the relation to being filmed following the accident in which he was involved. However, Ofcom considered that the public interest in examining the work of the police after a road traffic accident outweighed any expectation of privacy Mr McCarthy had. Ofcom concluded therefore that Mr McCarthy's privacy was not unwarrantably infringed in the making of the programme.
- Mr McCarthy had a limited expectation of privacy that footage of him, his company logo and his telephone number would not be broadcast. However, Ofcom considered that the public interest in examining the work of the police following a road traffic accident on a public highway and in developing the public's understanding of that work outweighed any expectation of privacy Mr McCarthy had. Ofcom concluded therefore that Mr McCarthy's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction

On 12 November 2009, BBC1 broadcast an edition of its series *Traffic Cops* (first shown in April 2009), which follows police officers who patrol the nation's highways and motorways. This edition looked at the work of South Wales Police officers and included footage of a road traffic accident in which two vehicles were involved in a head-on collision on the M4 motorway.

The programme showed police officers arriving at the scene of the accident and questioning the drivers and passengers of the vehicles involved to establish the cause of the collision. One of the vehicles involved in the accident was a limousine

driven by Mr Shaun McCarthy who had veered into the lane of oncoming traffic in a contra-flow system.

Mr McCarthy, who owns a limousine hire company, was shown being questioned by the police officers about the accident, as were the passengers in the limousine and the driver of the other vehicle involved. The limousine was shown in the programme and its distinguishing markings (that is, the company's name, a telephone number, logo and registration number plate) were largely obscured. However, as the vehicle was being moved off the carriageway, footage of the side of the vehicle revealed, albeit briefly, the company's name, "Limousine Wales", and a telephone number on its side windows. Also, the company's logo could be seen on the back of the limousine.

Towards the end of the programme, the commentary stated:

Commentary: *"Things have taken a turn for the worse for the limo driver, he's being held responsible for causing the accident"*.

Police officer: *"Having looked at the scene and the position of the vehicles, it's quite clear that he [Mr McCarthy] was in the wrong lane...the cause of the collision was the limo"*.

[police officer speaking to Mr McCarthy].

Police officer: *"OK, I'm now reporting you for careless and inconsiderate driving, OK? You're being reported for that offence"*.

Mr McCarthy was shown being cautioned by the police officer for careless and inconsiderate driving. The programme concluded by stating that *"the driver...was offered a place on a driver improvement scheme"*.

Mr McCarthy complained to Ofcom that his privacy was unwarrantably infringed in the making and broadcast of the programme as broadcast.

The Complaint

Mr McCarthy's case

In summary, Mr McCarthy complained that his privacy was unwarrantably infringed in the making of the programme in that:

- a) He was unaware why he was being filmed and he did not give his permission.

In particular, Mr McCarthy said that it was not explained to him either by the police officers or the camera crew why he was being filmed. He said that the only time the camera crew was mentioned to him was by a police officer who said that they had a camera crew with them before going on to caution him.

In summary, Mr McCarthy complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- b) His face was not obscured in the programme and his company name "Limousines Wales" and his home telephone number were shown in the programme. The programme also displayed the company logo which is a dragon and a flag.

By way of background, Mr McCarthy said that he did not expect that any footage of the accident would be broadcast on national television networks. He said that at the time of the accident only a handful of people knew about it. Now that it has been broadcast, he said that he was constantly reminded of the accident and has been treated by other people like a criminal despite never convicted of any offence.

The BBC's case

In summary, the BBC responded to Mr McCarthy's complaint that his privacy was unwarrantably infringed in the making of the programme in that:

- a) The BBC said that while Mr McCarthy was not told why he was being filmed and may have preferred not to have been, he was filmed in his capacity as a professional limousine driver on a busy public thoroughfare where he would have enjoyed only a limited expectation of privacy. The BBC said that Mr McCarthy was, in the opinion of the police at the scene of the accident, responsible for causing the accident and, in due course, accepted a place on a Driver Improvement Course as a consequence. It said that it believed that Mr McCarthy's expectation would therefore be significantly reduced in light of his actions.

The BBC also said that there was a strong public interest in a programme of this nature in showing the work of the police and that it was in the public interest to include the footage of the accident for which Mr McCarthy was found responsible.

In summary, the BBC responded to Mr McCarthy's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that:

- b) The BBC said that any infringement of Mr McCarthy's privacy resulting from the broadcast of the programme was warranted in that the strong public interest in showing this incident outweighed his right to privacy. It said that Mr McCarthy was found by the police to have been responsible for causing the accident by losing control of his limousine and colliding with oncoming traffic.

The BBC said that in the version of the programme about which Mr McCarthy had complained, neither his company's name, logo nor his telephone number were visible. It said that these features could be seen in the programme when first broadcast but that, as a gesture of good will, the BBC had agreed to obscure these details in all future broadcasts. The BBC said that it accepted that there was a section of the programme in which the side of the limousine was shown and the company name "Limousine Wales" and Mr McCarthy's telephone number were not obscured. However, the BBC said that the programme makers had taken the decision not to obscure this particular section of the programme as they did not consider the details to be visible in the programme due to the brevity of the footage, the oblique angle of the vehicle window and the reflective glare on the window. It was therefore unnecessary, the BBC said, for these details to be obscured. In relation to Mr McCarthy's "Welsh dragon" company logo, the BBC said that the programme makers did not believe that it would be necessary to obscure the image given that it was a relatively commonplace picture from which it would not have been possible to identify Mr McCarthy's company or personal details.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision on Mr McCarthy's complaint, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript of it along with written submissions and supporting material provided by both parties.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

- a) Ofcom considered Mr McCarthy's complaint that his privacy was unwarrantably infringed in the making of the programme in that he was filmed without his consent.

In considering whether Mr McCarthy's privacy was unwarrantably infringed in the making of the programme infringed Mr McCarthy's privacy, Ofcom first considered the extent to which Mr McCarthy could have expected that he would not be filmed in the particular circumstances.

Ofcom noted that Mr McCarthy was filmed by the programme makers in the period following a road traffic accident in which the vehicle he was driving had collided with an on-coming car (for which he had accepted responsibility). He was also filmed being cautioned by the police for his role in the accident. Ofcom considered that Mr McCarthy would have had some expectation that he would not be filmed for a television programme in such a situation.

However, Ofcom noted that the filming took place on a public highway and Mr McCarthy was clearly visible to other motorway users. Further, Mr McCarthy had been filmed openly and the programme makers had not concealed the fact that they were filming him.

Having given consideration to all of the factors above, Ofcom considered that Mr McCarthy had only a limited expectation of privacy in relation to being filmed in these circumstances.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the work of the police following a road traffic accident on a public highway. In Ofcom's view, it would be inappropriate to unduly constrain programme makers' ability to film in these circumstances. It took the view that this outweighed Mr McCarthy's expectation of privacy in relation to being filmed.

Taking all of these factors into account, Ofcom therefore found that there was no unwarranted infringement of Mr McCarthy's privacy in the making of the programme.

- b) Ofcom considered Mr McCarthy's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that his face was not obscured and that his company's name, logo and his telephone number were shown.

In considering whether Mr McCarthy's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which Mr McCarthy could have expected that the footage of him filmed at the scene of the accident (including images of his face, his company's name, logo and his telephone number) would not be broadcast.

Ofcom noted that the footage of Mr McCarthy included in the programme had been filmed by the programme makers shortly after a road traffic accident in which the vehicle he was driving had collided with an on-coming car.

Ofcom watched the programme as broadcast and paid particular attention to the parts that included footage of Mr McCarthy. Ofcom noted that McCarthy's face was shown unobscured in the programme and his voice was heard. It also noted that his company's name "Limousine Wales", his company logo and telephone number were visible, albeit very briefly, as the vehicle was being pushed onto the hard shoulder of the motorway. Ofcom considered that Mr McCarthy was identifiable from this footage included in the programme.

Ofcom considered that Mr McCarthy may have had some expectation that footage of him filmed at the scene of the accident (including images of his face, his company's name, logo and his telephone number) would not be broadcast in a television programme.

However, Ofcom also took note that the footage of Mr McCarthy that was shown in the programme had been filmed on a public highway where he had been clearly visible to other motorway users. The footage of Mr McCarthy had been filmed openly and that the programme makers had not concealed the fact that they were filming him.

Ofcom also noted that at the end of the programme, the commentary stated:

"The limousine driver whose head-on collision in a contraflow caused such a headache for everyone, was offered a place on a driver improvement scheme."

Ofcom further noted that, although Mr McCarthy was not arrested or charged with an offence following the accident, he was cautioned by the police officer at the scene for causing the accident. Ofcom noted that Mr McCarthy was reported for careless and inconsiderate driving which he did not contest and for which he

subsequently accepted a place on a Driver Improvement Course as an alternative to the offence being referred to the Crown Prosecution Service.

In these circumstances, Ofcom considered that Mr McCarthy had only a limited expectation that footage of his face, company's name, logo and telephone number in the programme would not be broadcast.

Ofcom then went on to weigh the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. In the circumstances of this particular case, Ofcom considered that the right to freedom of expression and the public interest in the programme examining the work of the police following a road traffic accident on a public highway and in developing the public's understanding of the range of situations dealt with by the police outweighed Mr McCarthy's limited expectation of privacy in relation to the footage of him which was broadcast.

Taking all of these factors into account, Ofcom therefore found that there was no unwarranted infringement of Mr McCarthy's privacy in the broadcast of the programme.

Accordingly, Ofcom has not upheld Mr McCarthy's complaint of unwarranted infringement of privacy in either the making or the broadcast of the programme.

Other Programmes Not in Breach

Up to 17 May 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
4Music Big Ones	27/04/2010	4Music	Nudity	1
7 Day Sunday	18/04/2010	BBC Radio 5 Live	Offensive language	1
Aviva sponsors ITV Drama Premiers	09/05/2010	ITV1	Violence and dangerous behaviour	1
BBC News	06/05/2010	BBC News Channel	Generally accepted standards	1
BBC News	06/05/2010	BBC News Channel	Generally accepted standards	1
BBC News	24/04/2010	BBC 1	Offensive language	1
Brainiac: Science Abuse	30/04/2010	Sky Three	Generally accepted standards	1
Breakfast	12/05/2010	BBC 1	Offensive language	1
Britain's Got More Talent Auditions	02/05/2010	ITV2	Drugs, smoking, solvents or alcohol	1
Britain's Got More Talent Auditions	25/04/2010	ITV2	Sexual material	1
Britain's Got Talent	24/04/2010	ITV1	Generally accepted standards	1
Britain's Got Talent	01/05/2010	ITV1	Nudity	4
Britain's Got Talent	08/05/2010	ITV1	Violence and dangerous behaviour	4
Carpet Right's sponsorship of House	25/04/2010	Sky 1	Generally accepted standards	1
Celebrity Juice (trailer)	20/04/2010	ITV2	Sexual material	1
Celebrity Juice (trailer)	13/05/2010	ITV2	Sexual material	1
Central Tonight	30/04/2010	ITV1 Central	Due accuracy	1
Channel 4 Pigeon ident	08/05/2010	Channel 4	Animal welfare	1
Channel 4's Alternative Election Night	06/05/2010	Channel 4	Age discrimination/offence	2
Channel 4's Alternative Election Night	06/05/2010	Channel 4	Religious/Beliefs discrimination/offence	1
Channel 4's Alternative Election Night	06/05/2010	Channel 4	Sexual orientation discrimination/offence	2
Channel 4's Alternative Election Night	06/05/2010	Channel 4	Offensive language	3
Chris Moyles Show	22/04/2010	BBC Radio 1	Generally accepted standards	1
Come Dine with Me Extra Portions	08/05/2010	Channel 4	Race discrimination/offence	1
Competition sponsorship	29/04/2010	Radio Pembrokeshire	Sponsorship	1
Coronation Street	10/05/2010	ITV1	Drugs, smoking, solvents or alcohol	6
Coronation Street	19/04/2010	ITV1	Religious/Beliefs discrimination/offence	1
Coronation Street	11/04/2010	ITV1	Generally accepted standards	1
Coronation Street	06/05/2010	ITV1	Product placement	1
Coronation Street	23/04/2010	ITV1	Sexual material	1
Coronation Street Omnibus	09/05/2010	ITV1	Product placement	1

Cougar Town (trailer)	05/04/2010	Living +1	Sexual material	1
Cowboy Builders	04/05/2010	Five	Race discrimination/offence	1
Cricket	12/04/2010	ITV4	Race discrimination/offence	1
Dance Your Ass Off (trailer)	03/05/2010	Sky 3	Generally accepted standards	1
Deal or No Deal	25/04/2010	Channel 4	Disability discrimination/offence	1
Deal or No Deal	04/05/2010	Channel 4	Gender, including Transgender discrimination	1
Desperate Housewives (trailer)	23/04/2010	E4	Offensive language	1
Dickinson's Real Deal	07/05/2010	ITV1	Competitions	1
Doctors	26/04/2010	BBC 1	Sexual material	1
EastEnders	27/04/2010	BBC 1	Religious/Beliefs discrimination/offence	1
EastEnders	30/04/2010	BBC 1	Religious/Beliefs discrimination/offence	1
EastEnders	03/05/2010	BBC 1	Religious/Beliefs discrimination/offence	1
EastEnders	29/04/2010	BBC 1	Sexual orientation discrimination/offence	4
EastEnders	13/05/2010	BBC 1	Sexual orientation discrimination/offence	3
Easter Special	02/04/2010	Glory TV	Materially misleading	1
Emmerdale	07/05/2010	ITV1	Generally accepted standards	1
Europa League Final	12/05/2010	Five	Competitions	1
Everybody Loves Raymond	06/05/2010	Channel 4	Race discrimination/offence	1
FA Cup Final	15/05/2010	ITV1	Generally accepted standards	1
Facejacker	23/04/2010	Channel 4	Race discrimination/offence	1
FlashForward	26/04/2010	Five	COSTA	2
Glee	15/03/2010	E4	Disability discrimination/offence	3
Glenn Martin DDS	24/04/2010	Sky1	Generally accepted standards	1
GMTV	11/05/2010	ITV1	Generally accepted standards	1
GMTV	27/04/2010	ITV1	Suicide and self harm	1
Gridlock and Road Rage	02/05/2010	More4	Offensive language	1
Have I Got a Bit More News for You	17/04/2010	BBC 2	Religious/Beliefs discrimination/offence	2
Have I Got Election News for You	07/05/2010	BBC 1	Generally accepted standards	1
Have I Got News for You	26/04/2010	BBC 2	Religious/Beliefs discrimination/offence	1
Heston's Gothic Horror Feast	27/04/2010	Channel 4	Religious/Beliefs discrimination/offence	1
Homes under the Hammer	28/04/2010	BBC 1	Gender, including Transgender discrimination	1
Hostel Part 2	22/03/2010	Five	Generally accepted standards	1

Iron Chef UK	30/04/2010	Channel 4	Animal welfare	1
ITV News	08/02/2010	ITV1	Due accuracy	1
ITV1 HD trailer	25/04/2010	ITV1	Generally accepted standards	1
ITV1 HD trailer	various	ITV1	Generally accepted standards	3
ITV1 HD trailer	04/05/2010	ITV1	Generally accepted standards	1
Joanna Lumley's Nile	26/04/2010	ITV1	Due accuracy	1
Killer Volcanoes	03/05/2010	Channel 4	Violence and dangerous behaviour	1
Last of the Dambusters	05/05/2010	Five	Offensive language	1
Live from Studio Five	10/05/2010	Five	Age discrimination/offence	1
Live from Studio Five	04/05/2010	Five	Generally accepted standards	1
Look North	30/04/2010	BBC 1 North	Nudity	1
Loose Women	11/05/2010	ITV1	Sexual material	1
Maltesers' sponsorship of Loose Women	29/04/2010	ITV1	Gender, including Transgender discrimination	1
Mazuma Mobile's sponsors Star Trek Voyager	31/03/2010	Virgin 1	Advertising content	1
Midsomer Murders (trailer)	03/05/2010	ITV1	Animal welfare	1
Naked Office (trailer)	29/04/2010	Virgin 1	Nudity	2
Naked Office (trailer)	06/05/2010	Virgin 1	Nudity	1
News update	06/05/2010	BBC 1	Generally accepted standards	1
Newsnight	08/05/2010	BBC 2	Offensive language	1
Newspaper Review	29/04/2010	Sky News	Race discrimination/offence	1
Numberjacks	06/05/2010	CBeebies	Suicide and self harm	1
Outnumbered	06/05/2010	BBC 1	Animal welfare	2
Over the Rainbow	08/05/2010	BBC 1	Premium rate services	1
Paddy Range	24/02/2010	The Quay 107.4FM	Commercial References	1
Pineapple Dance Studios	09/05/2010	Sky1	Sexual material	1
Pineapple Dance Studios Finale	09/05/2010	Sky1	Generally accepted standards	1
Premier League Football	02/05/2010	Sky Sports 1	Race discrimination/offence	1
Question Time	29/04/2010	BBC 1	Race discrimination/offence	1
Real Football Phone-In	15/03/2010	Real Radio Scotland	Religious/Beliefs discrimination/offence	5
Satire: The Great British Tradition	10/05/2010	BBC Radio 4	Offensive language	1
Scream If You Know the Answer (trailer)	09/05/2010	Watch	Materially misleading	1
Shameless	27/04/2010	E4	Generally accepted standards	2
Simon Bates	12/05/2010	Classic FM	Materially misleading	1
Sky News	25/04/2010	Sky News	Religious/Beliefs discrimination/offence	1
Sky News	06/05/2010	Sky News	Generally accepted standards	1
Sky News	06/05/2010	Sky News	Generally accepted	3

			standards	
Sky News	06/05/2010	Sky News	Generally accepted standards	3
Sky News	24/04/2010	Sky News	Suicide and self harm	1
Sky News at Six	01/05/2010	Sky News	Violence and dangerous behaviour	1
Sky News Today	11/05/2010	Sky News	Due impartiality/bias	1
Sunshine	29/04/2010	Film4	Hypnotic and other techniques	1
Supernatural (trailer)	04/04/2010	Living	Scheduling	1
The Graham Norton Show	11/05/2010	BBC 1	Offensive language	1
The Jeremy Kyle Show	10/05/2010	ITV1	Generally accepted standards	1
The Long Drive Home	23/04/2010	Live 960	Sexual material	1
The National Lottery	15/05/2010	BBC 1	Competitions	1
The Now Show	27/03/2010	BBC Radio 4	Religious/Beliefs discrimination/offence	1
The Official Chart with Reggie Yates	18/04/2010	BBC Radio 1	Generally accepted standards	1
The Official Chart with Reggie Yates	25/04/2010	BBC Radio 1	Offensive language	1
The One Show	27/04/2010	BBC 1	Animal welfare	1
The Osbournes	22/04/2010	Viva	Animal welfare	1
The Simpsons	15/04/2010	Sky 2	Religious/Beliefs discrimination/offence	1
The Trisha Goddard Show	13/05/2010	Five	Generally accepted standards	1
The Unbelievable Truth	02/05/2010	BBC Radio 4	Generally accepted standards	1
The World's Fattest Families and Me	03/05/2010	Channel 4	Animal welfare	2
The World's Fattest Families and Me	03/05/2010	Channel 4	Generally accepted standards	1
The Wright Stuff	26/04/2010	Five	Generally accepted standards	1
The Wright Stuff	20/04/2010	Five	Generally accepted standards	1
The Wright Stuff	03/05/2010	Five	Sexual material	1
This Morning	13/05/2010	ITV1	Harm	1
This Week	13/05/2010	BBC 1	Race discrimination/offence	1
Three in a Bed	28/04/2010	Channel 4	Generally accepted standards	1
Three in a Bed	28/04/2010	Channel 4	Sexual material	9
Top Gear	08/05/2010	BBC 3	Violence and dangerous behaviour	1
Torchwood	22/04/2010	BBC HD	Sexual material	1
Traffic Cops	14/04/2010	BBC 1	Flashing images/risk to viewers who have PSE	1
Video Exclusive	01/05/2010	Channel 4	Sexual material	2
Westwood: Kojo's Comedy Funhouse	06/04/2010	BBC Radio 1Xtra	Drugs, smoking, solvents or alcohol	1
You Have Been Watching	29/04/2010	Channel 4	Disability discrimination/offence	1
You've Been Framed!	01/05/2010	ITV1	Generally accepted standards	1

