

Ofcom Broadcast Bulletin

**Issue number 137
6 July 2009**

Contents

<u>Introduction</u>	3
Standards cases	
<u>In Breach</u>	
Knights and Angels <i>NDTV Imagine, 18 March 2009, 21:00 and 6 April 2009, 15:00</i>	4
Hit of the Hour <i>Sunrise Radio, 20 March 2009, 16:15</i>	8
Good Morning Europe <i>Venus TV, 27 February 2009, 09:00</i>	10
Bang Babes <i>Tease Me, 18 March 2009, 21:00</i>	12
The Pad <i>Tease Me 2, 20 March 2009, 12:30</i>	14
Note to Daytime and Adult Sex Chat Service Broadcasters	16
<u>Not in Breach</u>	
Jonathan Ross <i>BBC Radio 2, 9 May 2009, 10:00</i>	17
Other programmes not in breach/resolved	19

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 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>
- 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 policy to state the full language used on air by broadcasters who are the subject of a complaint where it is relevant to the case. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

Standards cases

In Breach

Knights and Angels

NDTV Imagine, 18 March 2009, 21:00 and 6 April 2009, 15:00

Introduction

NDTV Imagine is a Hindi general entertainment channel. The series *Knights and Angels* was a studio-based talent contest to find six cheerleaders for the Indian Premier League's Kolkata Knight Riders cricket team.

Ofcom received complaints from two viewers who were concerned that product placement had occurred in these programmes.

18 March 2009 and 6 April 2009

The series was sponsored by Sunsilk and during both programmes the wording "*Sunsilk presents Knights and Angels*" was displayed in several places, including on the set, on small screens on the front of the judges' table and on the back of the judges' cue cards.

Ofcom also noted that cans of Sprite in front of each of the judges were placed in such a way as to make them clearly visible in both programmes.

6 April 2009

As well as the main prize of being picked as a cheerleader for the Kolkata Knight Riders, there were two other smaller prizes awarded during this programme. One of the contestants was voted 'Miss Glamorous Hair' and was presented with a sash which said: "*Sunsilk Miss Glamorous Hair*". Another contestant was voted 'Miss Popular' and was presented with a sash which said: "*Sunsilk Gang of Girls Miss Popular*".

With regard to the sponsorship of the programmes, Ofcom asked the broadcaster for its comments with regards to the following Code Rules:

- 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. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental; and
- 9.12 – Sponsorship credits must be clearly separated from programmes by temporal or spatial means.

With regard to the commercial references in both programmes, Ofcom asked the broadcaster for its comments with regards to the following Code Rules:

- Rule 10.4 – No undue prominence may be given in any programme to a product or service; and
- Rule 10.5 – Product placement is prohibited.

Response

The licensee, NDTV Imagine Limited (“NDTV”), told Ofcom that it acquired the series from its parent company NDTV Imagine India. The broadcaster said that the references to Sprite in the programmes were arranged in India, and that it had no involvement in the arrangement, nor had it received any material benefit from the inclusion of the product in the programmes. As the programmes were acquired from outside the UK and NDTV had not received any material benefit from the inclusion of the products in the programme, it had considered the programmes to be exempt from Rule 10.5.

NDTV said that the cans of Sprite on the judges’ desk were never referred to in sound, handled, or consumed by the judges. However, the broadcaster acknowledged that the production team should have considered how the references to Sprite would appear to UK viewers “irrespective of rule 10.5” and said that it “understands that the dispensation allowed by rule 10.5 does not obviate a licensee’s responsibility to ensure no undue prominence is given to a product or service”. It added that it had now reminded its editing team to use a graphic to cover any visuals of products.

With regards to the references to the sponsor Sunsilk displayed on the set during both programmes, NDTV considered that because it had acquired the series from outside the UK and had not benefited from the sponsorship arrangement with Sunsilk, that the series was exempt from Rule 9.5 in the same way that programmes acquired from outside the UK where the Ofcom licensee has not benefited from product placement arrangements are exempt from Rule 10.5

The broadcaster added that “these elements were part of the original production and appeared in the background and would have been difficult to mask successfully without creating a regular distraction to the viewer and possibly giving greater prominence to the sponsor”. However, it did accept that it would have been possible to blur the screens in front of the judges’ desk and on the cue cards. The broadcaster said that whilst the Sunsilk name was present within the programme, the references were in vision only and did not feature products or any promotional information about Sunsilk. NDTV added that its production team had thought the visual references to Sunsilk would be considered permissible because the programme was acquired from outside the UK and because the references featured no promotional messages.

With regards to the references to Sunsilk on the sashes of the girls who had been awarded the accolades of ‘Miss Glamorous Hair’ and ‘Miss Popular’, NDTV said that “on balance [it did] not think the awards of Miss Glamorous Hair and Miss Popular Choice gave undue prominence to the programme sponsor, Sunsilk. Sponsors are allowed to donate their own products or services in competitions in programmes they sponsor. In those instances, the sponsor would qualify for a brief, factual reference”. It added that the camera did not linger on the Sunsilk name or the sashes and no verbal reference was made to Sunsilk.

Decision

Section Nine of the Code - Sponsorship

A sponsored programme is a programme that has had some or all of its costs met by the sponsor with a view to promoting its own or another’s name, trademark, image, activities, services, products or any other direct or indirect interest.

The rules in Section Nine of the Code apply to sponsored programmes and are derived from the requirements of European legislation, the Television Without Frontiers (TWF) Directive, and from the Communications Act 2003 (“the Act”). Ofcom’s rules on programme sponsorship reflect both the European legislation and the Act, which require that:

- the editorial independence of the broadcaster is maintained and that programmes are not distorted for commercial purpose;
- sponsorship arrangements are transparent; and
- sponsorship credits are separated from programme content and distinct from advertising.

Rule 9.12

Rule 9.12 of the Code states that sponsorship credits must be clearly separated from programmes by temporal or spatial means. Ofcom noted the broadcaster’s comments that it had acquired the sponsored series from its parent company in India and that it had not itself benefited from the sponsorship arrangement. However, whether or not an Ofcom licensee has benefited from a sponsorship arrangement, sponsored programmes must adhere to Section Nine of the Code (sponsorship).

In this case, during both programmes “*Sunsilk presents Knights and Angels*” was displayed on a large screen on the stage, on another screen to the left of the judges’ table, on three small screens on the front of the judges’ table and on the back of the judges’ cue cards. As the sponsorship credits were integrated into the programme itself, they were not clearly separated from the programme and were therefore in breach of Rule 9.12.

Rule 9.5

Rule 9.5 of the Code requires that there must be no promotional reference to the sponsor in a sponsored programme. In this case, the logo of the sponsor, Sunsilk, was displayed on the sashes of the winners of the ‘Miss Glamorous Hair’ and ‘Miss Popular’ accolades. Ofcom permits limited references to the brand, or main features, of an audience competition prize. This may, for instance, assist the viewers’ decision on whether or not they should enter a competition. Sponsors may also donate competition prizes. However, this competition in the programme broadcast on 6 April 2009, was not a competition open to viewers to participate, rather it was an additional feature of the format itself, involving the contestants competing to win the accolade of ‘Miss Glamorous Hair’ or ‘Miss Popular’. Ofcom therefore did not accept NDTV’s argument that the references to Sunsilk on the winners’ sashes were acceptable, because it was a sponsored competition. Ofcom considered these references to the sponsor within the programme to be in breach of Rule 9.5.

Section Ten of the Code – Commercial References in Programmes

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is, editorial content) must be kept separate. This is set out in Article 10 of the TWF Directive which is in turn reflected in the rules in Section Ten of the Code.

Rule 10.5

Rule 10.5 of the Code states that product placement is prohibited. Ofcom noted the broadcaster’s assurances that it had acquired the programmes from outside the UK and that it had not directly benefited from the product placement arrangement with Sprite that had been in place when the programme was produced. The Code sets out an exemption under the prohibition of product placement in Rule 10.5, for television

programmes acquired from outside the UK, provided that the Ofcom licensee broadcasting the acquired programme does not directly benefit from that arrangement. Ofcom therefore concluded that NDTV was not in breach of Rule 10.5 of the Code.

Rule 10.4

Programmes exempt from Rule 10.5 (as described above) are nevertheless still subject to Rule 10.4 which states that “no undue prominence may be given in any programme to a product or service”. The Code states that undue prominence may result from both, “the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme” and “the presence of or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification”.

In this case, during both programmes, cans of Sprite had been placed in front of each of the judges, and they appeared frequently throughout both programmes, as they were in shot every time the judges were in shot. There was clearly no editorial justification for the appearance of the cans of Sprite, as they had no relationship to the content of either of the programmes, and as such Ofcom judged their inclusion to be unduly prominent. Acquired programmes that include references to products or services resulting from product placement arrangements are exempt from Rule 10.5, provided that no Ofcom licensee has benefited from that arrangement. However, for such material to comply with Rule 10.4, Ofcom expects its licensees to ensure that it is sufficiently edited before transmission, to prevent undue prominence.

For the reasons set out above, the inclusion of the references to Sprite during the programmes were unduly prominent in breach of Rule 10.4.

18 March 2009 - Breach of Rules 9.12 and 10.4
6 April 2009 - Breach of Rules 9.5, 9.12 and 10.4

In Breach

Hit of the Hour

Sunrise Radio, 20 March 2009, 16:15

Introduction

Sunrise Radio offers a music, news and information service for the Asian community in Greater London.

Hit of the Hour is a regular feature sponsored by G&B Windows. On this occasion the presenter credited the sponsor by saying:

“This is the Hit of the Hour, brought to you in association with G&B Windows. They’ve got a special offer going on at the moment, seven windows and one opening, fully fitted, and it’s only going from £1,399. Why not give them a call? The number is 020 88 67 double 9 double 5, or you can just log on to their website, GandBwindows.com.”

A listener said that, “instead of playing a sponsorship jingle, [the presenter] gave what sounded like an advert.”

We asked Sunrise Radio for its comments with regard to Rule 9.9 of the Code, relating to sponsorship credits on radio, which states:

“Credits must be short branding statements. However, credits may contain legitimate advertising messages.”

The Code also states that one of the Principles of the sponsorship rules is “to maintain a distinction between advertising and sponsorship”.

Response

Sunrise Radio said that Rule 9.9 “clearly allows an advertising message to be attributed to the sponsor credit.” It believed that “the message attached to the company branding association in this example falls within this definition.” However, the broadcaster added that, if its interpretation of Rule 9.9 was incorrect, it sought clarification on the matter. Further, if this had led to a breach of the Code, the broadcaster said it had not intended to do so and offered its apologies.

Decision

Sponsor credits may be live or pre-recorded and may be voiced by a presenter.

Ofcom’s guidance to Rule 9.9¹ reminds radio broadcasters that the primary purpose of a sponsor credit is to inform listeners of the sponsorship arrangement. A full sponsor credit should include the sponsor’s name and identify clearly the sponsored programme or feature. A sponsor credit on radio may also contain additional material, some or all of which may be advertising (e.g. a sales message, contact

¹ The guidance can be found at:
<http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance9.pdf>

number or web address). However, a sponsor credit on radio should be brief. In general, sponsor credits on radio tend to be less than ten seconds in duration.

Further, while the Code permits radio sponsorship credits to contain “legitimate advertising messages”, the credits must not sound like full advertisements, as stated in the guidance to Rule 9.9.

In this instance the sponsor credit lasted almost twenty seconds. Further, in addition to the names of the sponsored feature and the sponsor, the information provided comprised:

- notification of a special offer (i.e. “*They’ve got a special offer going on at the moment...*”);
- full details of the offer (i.e. “*...seven windows and one opening, fully fitted, and it’s only going from £1,399...*”);
- a call to action (i.e. “*...Why not give them a call?...*”);
- the sponsor’s contact telephone number (“*...The number is 020 88 67 double 9 double 5...*”); and
- the sponsor’s website address (“*...or you can just log on to their website, GandBwindows.com*”).

Ofcom therefore considered that this sponsor credit sounded more like a full advertisement than a brief branding statement. The sponsor credit was therefore in breach of Rule 9.9.

Breach of Rule 9.9

In Breach

Good Morning Europe

Venus TV, 27 February 2009, 09:00

Introduction

Venus TV is a general entertainment channel for the Asian community, broadcasting in English, Urdu, Hindi, Punjabi, Gujarati and Bengali.

Good Morning Europe is a phone-in programme that lasts two hours and features discussions on a variety of topics. On this particular day the following text appeared throughout the programme in a caption across the screen: “*Last day to enter for the competition...*” Below this caption, premium rate entry numbers (for telephone and text entry) and other competition details were scrolled across the screen throughout the broadcast. On a number of occasions during the programme, the presenters promoted the competition (for flight tickets to India or Pakistan).

A viewer was concerned that the competition premium rate entry numbers were promoted throughout the programme, and therefore at times when the editorial content of the programme was unrelated to the competition.

We therefore asked the broadcaster for its comments with regard to Rule 10.4 of the Code, which states:

“No undue prominence may be given in any programme to a product or service.”

Response

Venus TV described the programme as “a very casual show which has various topics running throughout ... one of the talking points of the day was ... dream holiday destinations, therefore the promotion of [the] competition was relevant ... to remind viewers it was the last day of the competition.” The broadcaster added that dream holiday destinations were discussed “on an ad hoc basis, so the scroll with the premium rate number was on screen for the benefit of viewers who wanted to be part of the competition.”

Decision

It is generally acceptable to promote a premium rate number as an entry route to a competition broadcast within editorial content. However, premium rate numbers are also regarded as products or services, as they are generally used as a means to raise revenue. If a competition is being run within a programme, Ofcom generally considers that there is editorial justification to promote a premium rate number – as an entry route for the competition – at that time. However, we are likely to consider the promotion of that premium rate number at other times during the programme as unduly prominent – i.e. when the competition is not being run as part of the programme.

In this case, we accept that the competition was ongoing and had commenced before the programme started. Nevertheless, the competition was repeated as part of the programme, being promoted by the presenters. Ofcom therefore considers that the promotion of the premium rate telephone and text entry routes were editorially

justified at those times. However, there was no editorial justification for their promotion when the competition was not being featured as part of the programme – in particular, during “ad hoc” discussions concerning “dream holiday destinations.” Ofcom therefore considers that the promotion of the premium rate numbers at times when the competition was not being featured in the programme was unduly prominent. The programme was therefore in breach of Rule 10.4 of the Code.

Breach of Rule 10.4

In Breach

Bang Babes

Tease Me, 18 March 2009, 21:00

Introduction

Bang Babes is programming of a sexual nature, available freely without access restrictions on the channel *Tease Me* (Sky channel number 912). It is situated in the 'adult' section of the Sky electronic programme guide ("EPG"). The channel broadcasts programmes, after the 21:00 watershed based on interactive 'adult' sex chat services: viewers are invited to contact on-screen presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way.

Ofcom received a complaint about content broadcast, soon after 21:00, on *Tease Me* on 18 March 2009. The complainant said that the programme showed the presenters simulating masturbation and included close up screen images of the presenters' anal areas. Overall the sexual content was considered to be in excess of the material generally available on a channel without restricted access at 21:00.

Ofcom viewed the material. It noted that the broadcast showed three different presenters during the period 21:00 and 22:00. In the background a rolling film showing clips of women's bodies, which included one particular image of buttocks that showed the area immediately around the anus.

At 21:05 one of two presenters onscreen, wearing thong style pants, positioned herself on all fours and began to thrust her body to the camera for a period of approximately five minutes during which anal detail was visible. At 21:13 a single presenter replaced the two women. There followed a 45 minute period with this presenter wearing a very skimpy thong. Images of her with her legs open and her buttocks to the camera showed her anal area in some detail. She also lightly touched her buttocks and genital area and appeared to simulate oral masturbation.

Ofcom sought comments from the licensee, Bang Media, in respect of Rules 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by context) of the Code.

Response

The broadcaster stated that the content met generally accepted standards and would not have exceeded the viewer expectations for a channel in the 'adult' section of the EPG and for a programme broadcast post watershed. The broadcaster argued that the content did not include intrusive shots of the presenters' genital areas and there was no simulated masturbation. It was of the opinion that it was "highly unlikely that any degree of harm and offence would be caused to viewers". Bang Media sent Ofcom a DVD copy of an "infomercial" explaining how viewers can restrict access to adult sex chat channels (however, it was not clear whether this content had been broadcast or not).

The Licensee also confirmed that the material shown "would have been more appropriate broadcast after 22:00 and we concede that it was unsuitable for broadcast at 21:05 because of its proximity to the watershed."

Decision

In terms of the content of this broadcast one of the two presenters on screen at 21:05 posed in a sexual position, on all fours. Given that she was wearing thong style underwear there were occasions when her anal and labial areas were shown in intrusive detail. In addition, when the single presenter took over at around 21:13, she lay on her back and opened her legs whilst she gyrated in a sexual manner. She also lightly touched her genital and anal area and spanked her buttocks and on a few, brief occasions appeared to simulate oral masturbation.

In Ofcom's view the actions of each of these presenters onscreen between 21:05 and 22:00 was sexualised and sexually provocative and filmed in an intrusive manner. The nature and location of the channel in the 'adult' section of the EPG and the existence of parental controls are not sufficient in Ofcom's view to justify broadcast of such content before 22:00. The broadcast was therefore not justified by the context and breached Rules 2.1 and 2.3.

Given the explicitness of the material and its closeness to the watershed, Ofcom was particularly concerned that the licensee considered this content complied with the requirements of the Code. This is the second time Ofcom has found the licensee Bang Media in breach of Rule 2.3, for the broadcast of offensive sexual material on Bang Babes¹. Ofcom also notes that the same licensee, Bang Media, contravened Rules 1.3 and 2.3 when it broadcast *The Pad*, on its service *Tease Me 2*². Ofcom is concerned that the licensee does not fully recognise its regulatory responsibilities in this area and therefore Ofcom is requiring it to attend a meeting to explain its compliance arrangements. Further breaches of this nature may result in Ofcom considering further and more serious regulatory action.

Breach of Rules 2.1 and 2.3

¹ See *Bang Babes* finding published in October 2008 (www.ofcom.org.uk/tv/obb/prog_cb/obb120) and Note to Broadcasters in this Bulletin

² See *The Pad* breach finding elsewhere in this Bulletin

In Breach

The Pad

Tease Me 2, 20 March 2009, 12:30

Introduction

The Pad is a televised daytime interactive chat programme broadcast without access restrictions. It is located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on the service Tease Me 2 (Sky channel number 948). Viewers can call a premium rate telephone number and talk to an onscreen female presenter. Viewers see the female presenters engaged in conversation but cannot hear what is being said as music is played over the images. At certain intervals the presenters switch on a microphone and speak directly to viewers to encourage them to call into the premium rate telephony service ("PRS") number.

Ofcom received a complaint that material broadcast at lunchtime featured a presenter in a black PVC basque and fishnet tights lying in various positions such as on her side and back with her legs intermittently opening. In addition, she stroked her legs, thighs and buttocks throughout the broadcast. The presenter's outfit was skimpy revealing a low cleavage, and whilst lying on her back one of her nipples was visible for a short period of time.

Ofcom asked the licensee, Bang Media, for comments under Rule 1.3 (children must be protected from unsuitable material by appropriate scheduling) and Rule 2.3 (broadcasters must ensure that material which may cause offence is justified by context).

Response

Bang Media stated that the material was broadcast in the 'adult' section of the EPG which can be locked to prevent children from gaining access. This provided a sufficient safeguard to ensure that children were protected from material that was unsuitable for them.

Other factors, such as the timing of the broadcast being during school time when the majority of children would not be available to view, and the fact that the editorial content would not have appealed to children, ensured that children were additionally protected from this material in the broadcaster's view. As a result there was no breach of Rule 1.3.

The broadcaster also explained that in its view the material was not highly sexualised but consistent with the type of material a viewer would expect to see in the adult section of the EPG at this time of day. The presenter stroked her legs but this was done in a "sexy", "flirty" and "absent-minded manner". Whilst the broadcaster accepted the presenter's nipple appeared for a brief duration, it said she was wearing "disposable silicon nipple covers" so at no point was her nipple fully visible. The broadcaster strongly refuted any suggestion that the actions of the presenter were sexually provocative and stated they would not cause offence to the average viewer. Therefore the material did not breach Rule 2.3.

Decision

Rule 1.3 makes clear that children should be protected from material which is unsuitable for them by appropriate scheduling. This is judged according to factors such as the nature of the content, the nature of the channel and the time of broadcast.

With reference to the nature of the content, the presenter was dressed in an item of clothing that was very revealing to the point where her breasts were barely covered. This meant that when she adopted a certain position on her back, and the producer cut to a camera angle looking down onto her body, it was likely that her nipple area would be exposed to viewers. In Ofcom's opinion, one of the presenter's nipples was visible despite any nipple covers she was allegedly wearing.

In addition, in Ofcom's view, the positions adopted by the presenter – such as lying on her back with her legs opening and closing, and lying on her side lifting her legs up and down whilst stroking her thighs and buttocks – exceeded a “flirty” manner and were sexualised in nature.

Whilst showing a bare breast and nipple before the watershed is not a breach of the Code where it is justified by context, in this case the sexual nature of this material in addition to the visibility of the presenter's breast and nipple meant this partial nudity was shown in a clearly sexual context. This in Ofcom's view was not acceptable for a daytime broadcast.

Given the sexual nature of the content as set out above, the location of the channel in the 'adult' section of the EPG and its scheduling were not sufficient to provide adequate protection to prevent children from viewing this material. Ofcom has repeatedly made clear that the location of a channel, without any restricted access, in the adult section of the EPG does not in itself provide adequate protection to under-eighteens from inappropriate material¹. Therefore the material breached Rule 1.3.

In addition, Ofcom considered that this material would have exceeded the expectation of viewers watching a channel without any access restrictions, especially those who might come across it unawares, and even those familiar with daytime chat services. In Ofcom's view the material was offensive and not justified by the context and therefore in breach of generally accepted standards and Rule 2.3².

Breach of Rules 1.3 and 2.3

¹ See for example paragraph 8.5 of the Playboy TV sanctions case dated 2 April 2009, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf.

² Please also note breach finding in this Bulletin against the same licensee, Bang Media, concerning the programme *Bang Babes* on its channel *Tease Me*

Note to Daytime and Adult Sex Chat Service Broadcasters

Ofcom has during the past two years published a number of breach findings relating to daytime chat and adult sex chat channels which are available without access restrictions. Some of these contraventions were considered serious enough and/or were repeated so that Ofcom imposed financial penalties.

In this Bulletin, Ofcom has recorded breaches of the Code against broadcasters for transmitting material which was too sexually explicit.

Broadcasters operating in this area are reminded that Ofcom's Broadcast Bulletin and adjudications by the Content Sanctions Committee (see http://www.ofcom.org.uk/tv/obb/prog_cb/ and http://www.ofcom.org.uk/tv/obb/ocsc_adjud/ respectively) contain important guidance on the broadcast of sexual material. Failure to follow such guidance may result in Ofcom considering further regulatory action, including statutory sanctions.

Daytime and adult sex chat broadcasters must take all reasonable steps to protect people under eighteen and ensure that generally accepted standards are applied to their material.

Daytime chat programmes must ensure that all material broadcast is appropriate for the time of day bearing in mind that it is transmitted before the watershed and at times when children may be in the audience.

Similarly, material of a sexual nature broadcast after the 21:00 watershed must be appropriately limited and justified by the context to ensure compliance with generally accepted standards. For instance, broadcasters operating in the free-to-air 'adult' sex chat sector should take great care not to include physically invasive shots, in particular images of anal or genital areas for example, or of any real or simulated sex acts including masturbation or intercourse, or inappropriate shots of simulated oral sex.

Not in Breach

Jonathan Ross

BBC Radio 2, 9 May 2009, 10:00

Introduction

During a live and unscripted part of his Saturday morning radio show, Jonathan Ross discussed the prizes for the week's competition with his producer, Andy Davies. The prizes were primarily made up of Hannah Montana merchandise, which included a Hannah Montana MP3 player. As part of this discussion, Jonathan Ross said:

"If your son asks for a Hannah Montana MP3 player, then you might want to already think about putting him down for adoption in later life, when they settle down with their partner."

Ofcom received 61 complaints from listeners who were concerned that Jonathan Ross' comments were offensive and derogatory towards the gay community.

Ofcom considered these complaints under Rule 2.3 (material that may cause offence must be justified by the context).

Decision

The Code places no restrictions on the subjects covered by broadcasters, or the manner in which such subjects are treated, so long as offensive material that is broadcast is justified by the context. When reaching a decision on whether broadcast material breaches the Code, Ofcom must take into account the broadcaster's right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority¹.

Jonathan Ross' BBC Radio 2 show has been broadcast since 1999. It has an established format that is largely made up of quirky, humorous stories and on-air chat with the show's producer, Andy Davies.

The comment complained of was made during a live and unscripted element of the programme as part of a light-hearted discussion between Jonathan Ross and Andy Davies. In Ofcom's opinion, the comment was clearly presented as a joke intended to make light of the reactions that some parents may have if their child chooses a toy that is very widely recognised to be designed and marketed for the opposite sex. The humour was therefore based on the absurdity of the scenario and was not intended to cause offence. The fact that this comment was intended to be a joke was illustrated further by the reaction from Andy Davies, who was heard laughing. Ofcom therefore considered that the nature of the joke and the tone and manner in which it was presented made clear that it was not intended to be hostile or pejorative towards the gay community in general.

Ofcom took into account that Jonathan Ross is a well known personality, who has an irreverent, challenging and at times risqué humour that is familiar to audiences. Ofcom also recognised that the comment was clearly aimed at an adult audience. Importantly, if children did hear this comment it was unlikely that they would have

¹ As enshrined in Article 10 of the European Convention on Human Rights.

understood it or its implications. In light of this, Ofcom considered that there was little potential for the comment to be imitated by children, for example in the playground.

Ofcom considered that the comment was in keeping with the usual light-hearted and humorous style and format of the programme. The nature of the joke would have been well understood by the vast majority of listeners and would not have exceeded their normal expectations for the programme.

Taking all these factors into account, Ofcom considered that on balance the material was justified by the context and met generally accepted standards. The programme was therefore not in breach of Rule 2.3 of the Code.

Not in Breach of Rule 2.3

Other Programmes Not in Breach/Resolved

Up to 30 June 2009

Programme	Transmission Date	Channel	Category	Number of Complaints
8 Out of 10 Cats	12/06/2009	Channel 4	Violence	1
8 Out of 10 Cats	12/06/2009	Channel 4	Generally Accepted Standards	1
8 Out of 10 Cats	19/06/2009	Channel 4	Generally Accepted Standards	1
Afternoon Live With Kay Burley	03/06/2009	Sky News	Generally Accepted Standards	2
Alan Carr: Chatty Man	21/06/2009	Channel 4	Offensive Language	1
Alan Titchmarsh Show	04/02/2009	ITV1	Other	1
Andy Townsend and Mike Parry	19/06/2009	Talksport	Generally Accepted Standards	1
Anglia Tonight	05/06/2009	ITV (Anglia)	Due Impartiality/Bias	1
BMIbaby.com sponsorship of ITV Weather	n/a	ITV1	Advertising	1
Balls of Steel	17/06/2009	4Music	Generally Accepted Standards	1
Big Brother	n/a	Channel 4	Substance Abuse	1
Big Brother 10	15/06/2009	Channel 4	Generally Accepted Standards	3
Big Brother 10	23/06/2009	Channel 4	Advertising	1
Big Brother 10	19/06/2009	Channel 4	Sex/Nudity	1
Big Brother 10	16/06/2009	Channel 4	Generally Accepted Standards	5
Big Brother 10	21/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	24/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother 10	25/06/2009	Channel 4	Religious Offence	1
Big Brother 10	12/06/2009	Channel 4	Generally Accepted Standards	6
Big Brother 10	17/06/2009	Channel 4	Generally Accepted Standards	3
Big Brother Live	15/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	14/06/2009	Channel 4	Generally Accepted Standards	5
Big Brother Live	18/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother Live	23/06/2009	Channel 4	Generally Accepted Standards	1
Big Brother's Big Mouth	04/06/2009	E4	Use of Premium Rate Numbers	1
Breakfast	24/06/2009	BBC1	Violence	1
Bremner, Bird and Fortune	21/06/2009	Channel 4	Offensive Language	1
Celine Dion - Live in Las Vegas	27/06/2009	Biography Channel	Generally Accepted Standards	1
Centreforce Sessions	12/06/2009	Time 107.5FM	Offensive Language	2
Channel 4 News	21/05/2009	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	09/06/2009	Channel 4	Due Impartiality/Bias	2
Channel 4 News	09/06/2009	Channel 4	Other	1
Channel 4 News	26/06/2009	Channel 4	Due Impartiality/Bias	1
Charlie Brooker's Screenwipe	17/06/2009	BBC4	Generally Accepted Standards	1
Chris Tarrant	13/06/2009	Real Radio Wales	Generally Accepted Standards	1
Come Dine With Me	20/06/2009	Channel 4	Generally Accepted Standards	1
Coronation Street	17/06/2009	ITV1	Generally Accepted Standards	1
Coronation Street	24/06/2009	ITV1	Generally Accepted Standards	2
Coronation Street	22/06/2009	ITV1	Generally Accepted Standards	1

Dating The Enemy	15/06/2009	ITV1	Generally Accepted Standards	7
Decision Time Europe	07/06/2009	Sky News	Due Impartiality/Bias	6
Dispatches: Rape in the City	22/06/2009	Channel 4	Due Impartiality/Bias	4
Dispatches: Rape in the City	22/06/2009	Channel 4	Sex/Nudity	1
Domino's sponsorship of America's Got Talent	n/a	ITV2	Harm/Food	1
Domino's sponsorship of Britain's Got Talent	11/04/2009	ITV1	Harm/Food	3
Eastenders	19/06/2009	BBC1	Generally Accepted Standards	10
Eastenders	16/06/2009	BBC1	Offensive Language	1
Electric Ink	12/06/2009	BBC Radio 4	Sex/Nudity	2
European Elections 09	07/06/2009	BBC2	Generally Accepted Standards	1
European Elections 09	07/06/2009	BBC 2	Due Impartiality/Bias	1
Ford sponsorship of Evening Update	14/02/2009	Sky Sports News	Sponsorship	1
Friday Night with Jonathan Ross	19/06/2009	BBC1	Generally Accepted Standards	1
GMTV	17/06/2009	ITV1	Due Impartiality/Bias	1
Have I Got News For You	24/04/2009	BBC1	Offensive Language	1
Heart Breakfast	08/06/2009	Heart 106.2	Religious Offence	1
Hollyoaks	18/06/2009	Channel 4	Generally Accepted Standards	1
Horne & Corden	17/06/2009	BBC Three	Generally Accepted Standards	1
I'm a Celebrity, Get Me Out of Here! USA	22/06/2009	ITV2	Animal Welfare	1
ITN National Newscast	08/06/2009	ITV	Inaccuracy/Misleading	1
ITV Daytime	n/a	ITV1	Advertising	1
ITV News	16/06/2009	ITV1	Due Impartiality/Bias	1
ITV News	17/06/2009	ITV1	Offensive Language	1
Isle of Wight Festival 2009	12/06/2009	ITV2	Offensive Language	1
Isle of Wight Festival 2009	14/06/2009	ITV2	Other	2
Isle of Wight Festival 2009	14/06/2009	ITV2	Advertising	1
Jakers: the Adventures of Piggley Winks	06/06/2009	CBeebies	Offensive Language	1
Jeyes sponsorship of The Bill	25/06/2009	ITV1	Sponsorship	1
Jeyes sponsorship of The Bill	21/05/2009	ITV1	Dangerous Behaviour	1
Jo Whiley	26/06/2009	BBC Radio 1	Religious Offence	1
Ladette to Lady	02/06/2009	ITV1	Generally Accepted Standards	1
Ladette to Lady	16/06/2009	ITV1	Generally Accepted Standards	1
Life Begins Again	22/06/2009	Channel 4	Offensive Language	1
Live Football: UEFA Champions League	06/05/2009	Sky Sports 2	Offensive Language	50
Live Football: UEFA Champions League	06/05/2009	Sky Sports 2	Generally Accepted Standards	6
Loose Women	17/06/2009	ITV1	Generally Accepted Standards	1
Madeleine Was Here: Cutting Edge	07/05/2009	Channel 4	Due Impartiality/Bias	49
Maltesers sponsorship of Loose Women	n/a	ITV1	Generally Accepted Standards	1
May Contain Nuts	11/06/2009	ITV1	Other	1
May Contain Nuts	11/06/2009	ITV1	Offensive Language	1
May Contain Nuts	18/06/2009	ITV1	Generally Accepted Standards	1
Mehfil E Gazal	04/04/2009	Sunrise TV	Use of Premium Rate Numbers	1

Michael McIntyre's Comedy Roadshow	13/06/2009	BBC1	Generally Accepted Standards	1
Midsomer Murders	23/06/2009	ITV1	Sex/Nudity	1
News	10/06/2009	LBC 97.3 FM	Inaccuracy/Misleading	1
News at Ten	22/06/2009	ITV1	Due Impartiality/Bias	1
Nick Ferrari	08/06/2009	LBC 97.3FM	Due Impartiality/Bias	1
North West Tonight	28/05/2009	BBC1 (North West)	Generally Accepted Standards	3
North West Tonight	10/06/2009	BBC1 (North West)	Generally Accepted Standards	1
Petrie Hosken	08/06/2009	LBC 97.3FM	Crime (incite/encourage)	1
Post Modern Pastimes	17/06/2009	Channel 4	Dangerous Behaviour	1
Psychoville	18/06/2009	BBC2	Generally Accepted Standards	1
Real Radio	22/02/2009	Real Radio	Offensive Language	1
Reporting Scotland	11/06/2009	BBC1 Scotland	Offensive Language	1
Richard Bacon	03/06/2009	BBC Radio 5 Live	Generally Accepted Standards	1
Robin Hood	27/06/2009	BBC1	Generally Accepted Standards	1
Royal Ascot	20/06/2009	BBC1	Generally Accepted Standards	1
Russell Brand Doing Life 2007	20/06/2009	Channel 4	Offensive Language	1
Russell Brand Doing Life 2007 (trailer)	20/06/2009	Channel 4	Offensive Language	2
STV News	02/06/2009	STV	Inaccuracy/Misleading	1
Scratch 'n' Sniff's Den of Doom	20/06/2009	CITV	Generally Accepted Standards	1
Sky News	08/06/2009	Sky News	Due Impartiality/Bias	1
Sky News	11/06/2009	Sky News	Offensive Language	1
Sky News	09/06/2009	Sky News	Due Impartiality/Bias	1
Sky News	15/04/2009	Sky News	Generally Accepted Standards	1
Sky News	07/06/2009	Sky News	Generally Accepted Standards	1
Sky News	19/06/2009	Sky News	Flashing images	1
Sky News	08/06/2009	Sky News	Offensive Language	1
Sky Sports	20/06/2009	Sky	Inaccuracy/Misleading	1
Snakes on a Train	08/06/2009	Zone Horror	Generally Accepted Standards	1
Spain: Paradise Lost	17/06/2009	ITV1	Inaccuracy/Misleading	1
Springwatch Close Encounters with Simon King	15/06/2009	BBC2	Animal Welfare	1
Stephen Tompkinson's African Balloon Adventure (trailer)	20/06/2009	ITV1	Animal Welfare	1
Stick Your Oar In	09/05/2009	Quay 107.4 FM	Offensive Language	1
Sveriges Smartaste Barn	09/05/2009	TV3	Generally Accepted Standards	1
Taggart	06/06/2009	ITV3	Violence	1
That Mitchell and Webb Look	18/06/2009	BBC2	Generally Accepted Standards	1
The Essential Michael Jackson	27/06/2009	BBC2	Generally Accepted Standards	1
The Home Show	25/06/2009	C4	Offensive Language	3
The Jeremy Kyle Show	26/06/2009	ITV2	Generally Accepted Standards	1
The Life and Times of Tim (trailer)	12/06/2009	Living	Offensive Language	1
The Life and Times of Tim (trailer)	11/06/2009	Virgin1	Generally Accepted Standards	3
The Life and Times of Tim (trailer)	19/06/2009	Virgin1	Sex/Nudity	1

The Life and Times of Tim (trailer)	n/a	Virgin 1	Advertising	1
The Mentalist	11/06/2009	Five	Religious Offence	2
The One Show	17/06/2009	BBC1	Religious Offence	1
The Oprah Winfrey Show	05/05/2009	Diva TV	Due Impartiality/Bias	1
The Wire	19/05/2009	BBC2	Sex/Nudity	1
The Wright Stuff	22/06/2009	Five	Generally Accepted Standards	3
This Morning	18/06/2009	ITV1	Generally Accepted Standards	1
Today	20/06/2009	BBC Radio 4	Generally Accepted Standards	1
Tonight	05/06/2009	ITV1	Due Impartiality/Bias	1
Watch to Win	n/a	STV	Competitions	1
Weakest Link	19/06/2009	BBC1	Generally Accepted Standards	1
Wife Swap	21/06/2009	Channel 4	Offensive Language	2
World News America	13/05/2009	BBC News Channel	Generally Accepted Standards	1
You Are What You Eat	24/06/2009	More4	Offensive Language	1
You Are What You Eat	26/06/2009	More4	Generally Accepted Standards	1