

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹, Ofcom must include these standards in a code or codes. These are listed below.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which 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://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on 'political' advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising².

The BCAP Code is at:

<http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements 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://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

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.

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

Note to Broadcasters

Adult chat and daytime chat services

Ofcom guidance¹ clearly sets out what Ofcom considers to be acceptable to broadcast on daytime and adult chat services, both pre- and post-watershed. Ofcom has also made clear to licensees in numerous published decisions what sort of material is unsuitable in daytime or adult chat advertising content broadcast without mandatory restricted access.

Recent assessments and investigations by Ofcom into complaints about daytime and adult chat services have highlighted three areas which cause concern. Ofcom has therefore decided to amend the existing guidance to daytime and adult chat broadcasters to take account of these issues. **The revised guidance is effective immediately:** <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

Ofcom requires daytime and adult chat broadcasters to take careful note of the following three points in particular, which are reflected in the amended guidance:

Presenters' clothing on daytime chat services

During daytime chat content, all dress and behaviour should be non-sexual in tone and apparent intent. Therefore presenters should wear clothing that **adequately covers their bodies** (in particular their breasts, genital areas and buttocks). Presenters should not wear revealing underwear, swimwear, gym wear or **fetish clothing (for example nurse, secretary or police officer outfits)**;

Transition

The watershed is at 9pm and adult chat advertising is acceptable between 9pm and 5.30am only. Adult chat broadcasters should ensure that the transition to more adult material at 9pm, and **from adult chat to daytime chat at 05:30am**, is not unduly abrupt; and

R18 and equivalent products

Under BCAP Code Rule 30.3, advertisements for R18 and equivalent products (such as websites, video content or images that contain R18 material or its equivalent) are allowed on services with **mandatory restricted access only**. Ofcom has published on pages 53-59 and 60-66 of this Bulletin findings which illustrate how we apply BCAP Code Rule 30.3 and our interpretation of this rule regarding the advertising of websites and products that fall within the recognised character of pornography.

¹ Ofcom guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services, published 27 July 2011:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

Ofcom also formally notifies daytime and adult chat broadcasters that as a result our continuing concerns about the compliance of material broadcast on these services with BCAP Code requirements, we are commencing **a targeted monitoring exercise of all services broadcasting daytime and adult chat content.**

Broadcasters are put on notice that any serious or repeated failings in this area are likely to result in Ofcom taking further regulatory action, for example, the consideration of the imposition of statutory sanctions.

Sponsorship Credit Findings

Introduction to Sponsorship Credit findings

Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor with a view to promoting the sponsor's products, services, trade marks and/or other activities. This offers sponsors an opportunity to be associated with the content they are sponsoring. For reasons of transparency, broadcasters are required to inform the audience when such arrangements are in place. This is achieved through the use of sponsorship credits.

European legislation, the Audio Visual Media Services Directive ("the AVMS Directive"), limits the amount of advertising a television broadcaster can transmit (Article 23). As sponsorship credits are treated as part of the sponsored content rather than advertising, they do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

In addition to the rules on advertising minutage, Article 10(1)(b) of the AVMS Directive states that sponsorship must not "directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services". Guidance issued by the European Commission states that there should be "no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the *sole purpose* of identifying the sponsor or making explicit the link between the programme and the sponsor" (emphasis added).

The requirements of the AVMS Directive are reflected in Rule 9.22 of the Code¹, which states:

"Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.
- b) Sponsorship credits broadcast **during programmes** must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks."

¹ This rule applies to sponsorship credits on television only.

In particular, Rule 9.22(a) permits references to the products and services of a sponsor in credits broadcast around programming on the basis that such references can help identify the sponsor or help associate the sponsor with the sponsored content. We believe Rule 9.22(a) affords broadcasters the freedom permissible under the European legislation to identify sponsorship in a way that both informs the audience of the sponsorship arrangements and benefits the sponsor.

Ofcom recognises that when judging whether the various components of a sponsorship credit amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required. Ofcom has provided detailed guidance for broadcasters on this issue and how to ensure compliance with all the sponsorship rules in Section Nine of the Code. The guidance is available here: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

Background to Ofcom's monitoring of sponsorship credits

In 2008 and 2009 Ofcom undertook sponsorship credit monitoring exercises following an apparent increase in the information about sponsors' products and services included in some credits. Credits found to have breached the Code, and further guidance about the factors Ofcom takes into account when considering sponsorship credits' compliance with the Code, were published in Broadcast Bulletins 130² and 146³. In Broadcast Bulletin 146, Ofcom stated that it would continue to conduct monitoring exercises on sponsorship credits on an ad hoc basis.

Ofcom considers such exercises to be one of a number of means of fulfilling its statutory duty, under the Communications Act 2003, to set standards for broadcast content to secure the relevant standards objective in this area, namely that the international obligations of the United Kingdom with respect to advertising included in television services are complied with.

Broadcasters should note the European Commission has taken a very active interest in this issue and is known to be monitoring the compliance of sponsorship credits in some Member States (as well as other commercial matters that fall within its remit). It should be noted that, in particular, the European Commission is concerned about maintaining the distinction between sponsorship and advertising.

Ofcom recently undertook a further monitoring exercise of sponsorship campaigns.

As part of its monitoring exercise Ofcom reviewed over 100 sponsorship campaigns across a wide range of broadcasters licensed by Ofcom, including non-English speaking channels and channels which broadcast outside the UK.

As well as monitoring compliance with Rule 9.22, Ofcom also considered whether the sponsorship campaigns reviewed were compliant with other Code rules governing sponsorship credits, and in particular Rule 9.19 which states:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

² Broadcast Bulletin 130, 23 March 2009, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb130/>.

³ Broadcast Bulletin 146, 23 November 2009, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb146/>.

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content.”

Rule 9.19 reflects the requirements of the AVMS Directive which requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Ofcom has set out in its guidance for broadcasters⁴ that viewers should be told when a programme is sponsored and who the sponsor is. In addition the guidance states that the sponsor’s association with the sponsored content must be made clear to the audience in all sponsorship credits.

We were reassured that the vast majority of credits viewed did not breach the Code rules governing sponsorship credits. However, some credits were found in breach of Rules 9.19(b) and 9.22(a) and the findings are included in this issue of the Broadcast Bulletin.

Next steps

Ofcom will continue to monitor sponsorship credits on an ad hoc basis. In view of the published findings and the detailed guidance provided in respect of the rules in this area, broadcasters should note that sponsorship credits found to be in breach of the Code may also be considered for further regulatory action.

⁴ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In Breach

Sponsorship of Half Built House by Rated People.com

Channel 5, 10 July 2012 to 31 July 2012, various dates and times

Sponsorship of 5* Access and Inside Hollywood by MakeaMatch.co.uk

5 USA and 5, 4 July 2012 to 2 October 2012, various dates and times*

Introduction

Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) broadcast a sponsorship campaign for Rated People.com around *Half Built House* on Channel 5 between 10 July and 31 July 2012.

It also broadcast a sponsorship campaign for MakeaMatch.co.uk around the showbiz gossip programmes *5* Access* on its channel 5*, and *Inside Hollywood* on the channel 5 USA, between 4 July and 2 October 2012.

Rated People.com

RatedPeople.com is an internet-based service that enables homeowners to post jobs and find tradesmen who have been rated for quality, value and reliability by other homeowners on its website. We noted that the sponsorship credit for Ratedpeople.com included the voiceover:

*“The next time you’re looking for a tradesman make sure they’re rated;
Ratedpeople.com sponsors of Half Built House.”*

The on-screen visuals included a white wall being painted by a workman, followed by two workmen hanging a green “Rated” sign in the shape of a speech bubble against the painted white background. The green “Rated” sign was part of the sponsor’s logo and in the following shot it became part of the text *“sponsored by: Rated People.com”*.

MakeaMatch.co.uk

MakeaMatch.co.uk is an internet dating website. We noted that the sponsorship credits for MakeaMatch.co.uk included the following voiceovers:

“MakeaMatch sponsors 5 Access; find love today.”*

“MakeaMatch sponsors Inside Hollywood; find love today.”

The sponsorship credits were brief and on the left of the screen displayed a Polaroid photograph of a man and woman close to kissing with the caption *“found him!”* on the bottom of the photograph. The right of the screen displayed the text *“MakeaMatch.co.uk sponsors 5* Access”* or *“MakeaMatch.co.uk sponsors Inside Hollywood”*.

Ofcom considered that these sponsorship credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement."

Ofcom therefore requested Channel 5's formal comments on how these sponsorship credits complied with this rule.

Response

Rated People.com

Channel 5 stated that it had broadcast the sponsorship credit around a series of *Half Built House*, and: "The purpose of the sponsorship credit was to deliver a creative message that identified the sponsor and create[d] a thematic link with the programme."

Channel 5 said that even though the sponsor was a leading online trade recommendation service, it was "building brand awareness...and...as the name alone would not identify the sponsor...it was important to include a brief description of the service". Further, it stated that the phrase "*The next time you're looking for a tradesman, make sure they're rated*" provided a clear link to the programme which "was about property owners who start to renovate their home but became unstuck and did not know how to finish the work".

The Licensee said it had taken care not to include promotional messages, claims about the sponsor's services, or calls to action, and had included minimal contact details on-screen. It considered that the focus of the credit was the sponsorship arrangement itself, and therefore that it was not in breach of the Code.

MakeaMatch.co.uk

Channel 5 said that the sponsor was relatively new to the dating website market and "wished to build brand awareness" and that because "the name MakeaMatch would not necessarily convey what the service was, we considered that it was acceptable to include a brief description of the sponsor's service...achieved both through the visual of the Polaroid photograph of a couple and by the use of the words: "*find love today*"."

Channel 5 said that it had taken care not to include "promotional elements" and that "the information was intended to be a brief statement which was purely descriptive of the nature of the sponsor's service". The Licensee considered as the credit did not include claims about the service or calls to action, and included minimal contact details provided on-screen, the sponsorship credit complied with the Code.

Channel 5 also submitted that, in its view, "the brief description of the service "*find love today*" at the end of the credit" did not overshadow the "primary focus of the credit which was the sponsorship message". It therefore considered that the credit complied with the Code.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

RatedPeople.com

We acknowledged that in the RatedPeople.com credit the sponsorship arrangement was identified by a reference in the voiceover “*Ratedpeople.com sponsors of Half Built House*” and the on-screen text “*sponsored by*”. However, Ofcom considered that the phrase “*The next time you’re looking for a tradesman make sure they’re rated*” raised a number of issues under Rule 9.22(a).

We took into account that Channel 5 submitted that the sponsor wanted to build brand awareness and considered that it was appropriate to include a brief description of the sponsor’s service within the sponsorship credit. We also noted that Channel 5 had said that this phrase was used in the voiceover to link the sponsor thematically to the sponsored programme, the subject of which was homeowners who had struck difficulties in their own home improvement works. We acknowledged that there was a thematic link between the sponsor’s service and the sponsored programme.

Whilst it is acceptable to include a brief description of a sponsor’s products or services in a sponsorship credit, Rule 9.22(a) and Ofcom’s accompanying guidance¹ make it clear that such references must be for the “sole purpose of identifying the sponsor and/or the sponsorship arrangement”.

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In this case, Ofcom considered that the phrases *“next time you’re looking”* and *“make sure they’re rated”* went beyond what would be required to identify the sponsor and its service, and also exceeded the type of language that would be required to create a thematic link. Instead, Ofcom considered that these phrases actively encouraged viewers to use the sponsor’s service.

We noted that Channel 5 had also submitted that another reason why it considered that the focus of the credit was the sponsorship arrangement was because minimal contact details of the sponsor were displayed visually. Ofcom noted that the credit included a green “Rated” sign being hung on a white background by two workmen, which then became the centre of the next screen with the words *“sponsored by”* appearing in smaller font and much less prominently than *“Rated People.com”*.

Ofcom also noted that the voiceover included a clear reference to the sponsorship arrangement but Ofcom considered that the other elements of the voiceover, namely the phrase *“The next time you’re looking for a tradesman make sure they’re rated”*, taken in combination with the visuals, had the effect of shifting the focus of the credit away from the sponsorship arrangement itself and onto the sponsor’s service.

Ofcom therefore considered that the sponsorship credit was in breach of Rule 9.22(a).

MakeaMatch.com

Ofcom acknowledged that the sponsorship credit identified the sponsorship arrangement in the voiceovers *“MakeaMatch sponsors 5* Access”* and *“MakeaMatch sponsors Inside Hollywood”* and the on-screen text *“MakeaMatch.co.uk sponsors 5* Access”* and *“MakeaMatch.co.uk sponsors Inside Hollywood”*.

However, Ofcom was concerned that the phrase *“find love today”* in the voiceover raised issues under Rule 9.22(a).

We noted that Channel 5 was of the view that the sponsor’s name “MakeaMatch” would not have been sufficient for the audience to identify the service provided by the sponsor, and that therefore it was justified to include the tagline *“find love today”* to help identify the nature of the sponsor’s business.

Ofcom did not agree. Ofcom considered that the phrase *“find love today”* went beyond a description of the sponsor’s business as an online dating service, and took the form of a claim about the outcome viewers could expect to achieve if they used the service.

Ofcom therefore found the credit in breach of Rule 9.22(a).

Breaches of Rule 9.22(a)

In Breach

Sponsorship of Classic Car Rescue by Adrian Flux Insurance

Channel 5, 24 September 2012 to 29 October 2012, various dates and times

Introduction

Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) broadcast a series called *Classic Car Rescue* on Channel 5 from 24 September to 29 October 2012, which was about a group of engineers who restore classic cars previously earmarked for salvage. The programme was sponsored by Adrian Flux Insurance, a general insurance broker that sells insurance policies and other financial products and services.

Ofcom noted that the opening Adrian Flux Insurance sponsorship credit included the following voiceover:

“From super mini to super car – Adrian Flux Insurance – building a policy around you; sponsors of Classic Car Rescue.”

Animated line drawings were shown of various vehicles including cars, a motorcycle and a tank, being completed by the addition of lights, windows, and wheels. This was followed by a static screen with the Adrian Flux logo displayed in the centre and the sponsor’s website address underneath: “www.adrianflux.co.uk”.

Ofcom also noted that the Adrian Flux sponsorship credit which appeared either side of the programmes’ advertising breaks (“the advertising break credit”) included the following voiceover:

“Building policies around our customers – Adrian Flux Insurance.”

An animated line drawing was shown of a car being built around a driver and passenger, followed by a static screen with the Adrian Flux logo displayed in the centre and the sponsor’s website address underneath: “www.adrianflux.co.uk”. There was no information about the association between the sponsor and the sponsored content.

Ofcom considered that both credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

In addition, Ofcom considered that the advertising break credit raised issues warranting investigation under Rule 9.19 of the Code, which states that:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content.”

Ofcom therefore asked Channel 5 for its formal comments on how both sponsorship credits complied with Rule 9.22(a), and how the advertising break credit complied with Rule 9.19.

Response

Channel 5 said that the sponsor wanted to build brand awareness with car owners and “considered that as the [Adrian Flux Insurance] name alone would not identify the sponsor to most viewers, it was important to include a brief description of the specific service of car insurance as the sponsorship brand for the programme”. In addition, Channel 5 submitted that “a cartoonish approach to showing cars in kit form coming together” was a strong thematic link to the programme being sponsored.

Channel 5 considered that the phrase in the opening credit “*from super mini to super car*” was “designed to be a catchphrase making clear the nature of the business”. It submitted that: “The creative message was to identify car insurance as the sponsor and to thematically link the concept of building together old car parts with building policies which is the nature of the company and the insurance business in general.”

Channel 5 submitted that it had understood that a brief description of the sponsor’s service is acceptable “provided special promotional references are not made”. It said that it had taken care to ensure that the words used to identify the sponsor had not been promotional and believed that the information provided in the advertising break credit was a “purely descriptive brief statement”. The Licensee submitted that the phrase “*building policies around our customers*” was a play on words “in line with the visual sketch drawings and the nature of insurance companies in that all insurance policies are tailored”. Channel 5 noted that the opening and advertising break credits did not contain claims about the sponsor’s service or calls to action, contained minimal contact details and did not refer to price. Channel 5 was therefore of the view that both credits were compliant with Rule 9.22(a).

In addition, Channel 5 submitted that it was aware that each credit must comply with Rule 9.19 and that it “regret[ted] the omission on this occasion” with reference to the advertising break credit. It explained that due to employee illness and absence “the credit went to air without sign off at the senior level required”. It also submitted that as soon as Ofcom had requested comments in relation to these sponsorship credits it had “arranged for the credit to be edited so that...it carried the message “Sponsors of Classic Car Rescue””.

The Licensee also submitted that it had reviewed and revised its procedures to ensure that employees are aware of the procedures covering sponsorship credits, and is planning refresher workshops so employees are familiar with internal procedures and guidance.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom

with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

In this case, we noted that the opening Adrian Flux Insurance credit voiceover included the phrases *“from super mini to super car”* and *“building a policy around you”*. Further, the advertising break credit included the voiceover *“building policies around our customers”*. We noted that Channel 5 had submitted these lines were used to create a thematic link with the programme, and were designed to provide the viewer with an understanding of the nature of the sponsor’s business, which it considered was not necessarily conveyed by inclusion of the sponsor’s name.

As made clear in Rule 9.22(a), sponsorship credits “may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement”. However, Ofcom considered that the phrases *“from super mini to super car”*, *“building a policy around you”*, and *“building policies around our customers”* referred to particular features of the sponsor’s services, i.e. the scope of the insurance policies that may be available, and that the insurance policies of the sponsor were tailored to individual car owners’ needs. In Ofcom’s view the phrases used in the credits went well beyond a brief description of the generic business of car insurance that would be required to identify the fact that the sponsor provided car insurance – a widely and well understood service. Likewise, we considered that when taken together they exceeded the type of language that would be required to create a thematic link between the sponsor and the sponsored content. Rather, we considered that these phrases highlighted to viewers particular features of the sponsor’s service that would be available to viewers using that service, and therefore amounted to an advertising message. Ofcom therefore considered that both the opening sponsorship credit and the advertising break credit were in breach of Rule 9.22(a).

In addition, Rule 9.19 of the Code requires that sponsorship must be clearly identified by means of sponsorship credits, and that the sponsorship credits must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

Ofcom noted that the advertising break credit did not make any reference to the sponsorship arrangement. Ofcom noted that, following notification from Ofcom that the advertising break credit did not refer to the sponsorship arrangement, Channel 5 acknowledged that this was an “omission” which had occurred as a result of the credit not being properly signed off by senior staff. We also noted that Channel 5 had confirmed that it had since amended the credit to comply with Rule 9.19. However, the credit investigated by Ofcom did not make clear the association between the sponsor and the sponsored content, in breach of Rule 9.19(b).

Conclusion

Ofcom noted that it has previously recorded breaches of the Code in relation to sponsorship credits that were broadcast on Channel 5. Channel 5 was found in breach of Rule 9.19, which was recorded in Broadcast Bulletin 198¹, and which involved the broadcast of a credit that did not refer to the sponsorship arrangement.

Ofcom was therefore particularly concerned in this case that the advertising break credit did not refer to the sponsorship arrangement.

Breaches of Rules 9.19(b) and 9.22(a)

¹ Broadcast Bulletin 198, 23 January 2012,
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb198/>.

In Breach

Sponsorship of Sky News Weather Reports by Qatar Airways

Sky News, August 2011 to date, various dates and times

Introduction

Sky Broadcasting Limited (“Sky” or “the Licensee”) broadcasts weather reports on the Sky News channel at regular intervals throughout the day. The Sky News weather reports have been sponsored by Qatar Airways since 2005. The credits have followed the same format since then although the creative content has varied. The sponsorship credits in their current format began in August 2011 and are due to run until 2013.

The Sky News weather report is broadcast for approximately 60 seconds and includes a ten second opening sponsorship credit and a five second closing sponsorship credit. Several variations of the opening credits are broadcast in rotation and there are two versions of the closing credits that are broadcast alternately.

Ofcom considered six different versions of the opening credits in the current campaign which included the following voiceovers and visuals:

Credit 1

“As the dry condition extends over Amritsar we’ll find a blend of flavours to tempt your palate.”

The graphics showed an armful of multicoloured bangles gradually coming into focus which then faded into a plate of coloured sliced fruit. After the voiceover, the Qatar Airways logo appeared at the top of the centre of the screen for less than two seconds.

Credit 2

“As the rain pours over Johannesburg we’ll keep your spirits up.”

The graphics showed the faces of two children laughing and playing in the rain, as the camera zoomed out a man is seen watching the children on an in-flight screen and wearing Qatar Airways headphones. After the voiceover, the Qatar Airways logo appeared at the top of the left hand side of the screen for less than two seconds.

Credit 3

“Over the north of Beijing as the visibility drops you’ll still see things with perfect clarity.”

The graphics showed a bright sun in a hazy city skyline which changed into an airline cabin reading light and a man was shown reading. After the voiceover, the Qatar Airways logo appeared on the top right of the screen for less than two seconds.

Credit 4

“As the hot spell extends across the Gulf we’ll still make sure you feel refreshed.”

The graphics showed an out of focus image of the sun which gradually focussed into a scoop of yellow ice cream in a bowl with fruit. After the voiceover, the Qatar Airways logo appeared on the top right of the screen for less than two seconds.

Credit 5

“As the fog hangs wearily over London we can offer something to cheer you up.”

The graphics showed fog over a city skyline which gradually changed into steam coming from a hot drink, being drunk by a woman. After the voiceover, the Qatar Airways logo appeared on the upper left half of the screen for less than two seconds.

Credit 6

“As a slight chill spreads across Melbourne we’ll find a way to perk you up.”

The graphics showed moisture on black fruit or pebbles which faded into an image of caviar and sour cream on a small pancake. After the voiceover, the Qatar Airways logo appeared on the top right of the screen for less than two seconds.

Ofcom noted that there was no information about the association between the sponsor and the sponsored content in the above credits.

The closing credits included the voiceover:

“Weather updates sponsored by Qatar Airways.”

One version of the closing credit showed the head and shoulders of a Qatar Airways hostess, the other closing credit focussed on the face of the same hostess. Both credits included the Qatar Airways logo and the Qatar Airways website address was also displayed in smaller text in the bottom half of the screen.

Ofcom considered that the opening credits raised issues warranting investigation under Rule 9.19 of the Code which states that:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content”.

Ofcom therefore asked Sky for its formal comments on how the opening sponsorship credits complied with Rule 9.19(b).

Response

Initially Sky provided a brief response submitting that the credits were compliant with Rule 9.19(b) as well as with Rule 9.20 of the Code, which requires that sponsorship

credits must be broadcast at the beginning and/or during and/or the end of the programme.

Sky stated that: “[T]he opening credits are themed to create a link between the sponsor and the one minute “Weather Report”. The closing credits are there to identify Qatar Airways via voiceover as the sponsor.” Further, Sky suggested as the weather report was so short it made “sense to only identify the sponsor of the programme in the end credit, as is allowed in Rule 9.20”.

Subsequently, Sky said it was of the view that the Qatar Airways credits complied with the Code rules that were in place prior to February 2011, and referred to Article 10(c) of the EU Audiovisual Media Services Directive (“the AVMS Directive”) which sets out that viewers should be clearly informed of the existence of a sponsorship agreement, and sponsored programmes should be identified by the name, logo and/or any other symbol of the sponsor.

Sky also stated that: “[T]he current rules are ambiguous.” It asserted that in a short programme such as the Sky News weather reports the identity of the sponsor is clear and “although there is no verbal or written reference to the arrangement in the opening credit, the end credit clearly identifies the sponsor”. Sky considered that “the creative content makes the sponsorship arrangement completely transparent as the end credit follows so quickly”. Sky argued that because Rule 9.20 sets out that the credits do not have to be broadcast at both the beginning and the end of the programme and because the association between the sponsor and the sponsored content is clear, it had met the requirements of Rule 9.19(b) and “the spirit of” Ofcom’s guidance.

Sky considered because of the length of time the Qatar Airways sponsorship credits have been running; the brevity of the weather report resulting in most viewers seeing both the opening and closing credits; and the frequency of the credits being shown, it could not “see what the harm and/or confusion is of such a sponsorship creative”. Further Sky argued that there should be some flexibility in the interpretation of the relevant rules, and that the rule and guidance “should allow for creative solutions which meet the requirements of the market place and the key principles and rules as outlined in Section 9 [of the Code]”.

In Sky’s view: “Rule 9.19 does not explicitly state that ALL sponsorship credits must include wording along the lines of “xxx sponsors yyy”. Rather, it is the Guidance that relays this information.” Sky argued that it cannot be in breach of the Guidance, only the Code. With regards to Rule 19.9 Sky stated: “We have (as we did before February 2011) interpreted this as meaning that the overall sponsorship *campaign* needs to make this association clear, not individual sponsorship *credits*.”

In a further submission Sky noted that Ofcom has previously considered the Qatar Airways sponsorship credits and said it had been of the view that Ofcom had given them a “clean bill of health”. Sky explained that this was because Ofcom had included entries relating to Sky Weather reports under the cases “Assessed/Not Investigated” published in previous issues of the Broadcasting Bulletin. Sky considered that it was “justified in relying on Ofcom’s assessment and “approval” of the credits in their present form” and therefore that Sky believed that it was not “fair, reasonable or proportionate to find them in breach now”.

Finally, Sky reiterated that because of the brevity of the weather report, no viewer would be in any doubt or confusion as to the purpose of the ten second opening credit, given the thematic link between the sponsor and the sponsored content. In

addition Sky argued that there would be no viewer confusion “because, when the sponsorship credit airs, the Sky News ‘ticker-tape’ remains at the bottom of the screen and the Sky News bug...also remains on screen”. Sky also noted that there is a Qatar Airways logo on screen in the opening credit to identify the sponsor. In addition it argued that Ofcom has provided no evidence of viewer confusion or harm.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The AVMS Directive requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code which states that sponsorship must be clearly identified by means of sponsorship credits, and that the sponsorship credits must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

In February 2011 revisions to the Code came into effect, having been subject to a full consultation conducted by Ofcom. The *Statement on the Broadcasting Code Review: Commercial References in Television Programming* (“the Code Review Statement”) sets out the reasoning for changes to Section Nine of the Code, including Rule 9.19, following consideration of the consultation responses¹.

Ofcom accepts that Rule 9.19 represented a change from the previous requirements in this area under the Code. Prior to 28 February 2011, there was not a requirement in the Code for each sponsorship credit to include an association message, and therefore the opening credits in this case would not have raised issues under the Code.

However, in the context of the introduction of new rules for product placement which enable the inclusion of more commercial references in television programming, the Code Review Statement made very clear that the purpose of Rule 9.19 “is to ensure that viewers can readily recognise sponsorship arrangements and not confuse credits with other forms of commercial messages”².

In paragraph 5.38 of the Code Review Statement (published on 20 December 2010), Ofcom expressed the view that the vast majority of current credits were already compliant with the new Rule 9.19 and its introduction in the revised Code would therefore have minimal impact on licensees. However to reflect the fact that

¹ *Statement on the Broadcasting Code Review: Commercial References in Television Programming*,
<http://stakeholders.ofcom.org.uk/binaries/consultations/724242/statement/statement.pdf>.

² Paragraph 5.35

amendments to credits would be required in some cases, Ofcom noted that an implementation period before the revised Code came into force on 28 February 2011 would “provide an opportunity for broadcasters to amend any credits to ensure compliance with this rule”.

In Ofcom’s view, Sky’s assumption that the association was clear to the viewer because of the brevity, frequency, and viewers’ familiarity with the weather reports, was not sufficient to preclude it from complying with the requirements of Rule 9.19. Further we did not accept that the presence of the Sky News ticker-tape and logo on–screen throughout the credit was sufficient to help viewers identify that Qatar Airways was sponsoring the weather reports.

We noted that Sky suggested that Ofcom had previously given the Qatar Airways sponsorship credits a “clean bill of health” because they had appeared in the “Assessed/ Not Investigated” section of previous issues of the Broadcast Bulletin. Sky therefore considered it had been justified in continuing to broadcast the credits in their current form. Broadcasters should note that, as stated in the Broadcast Bulletin, the “Assessed/Not Investigated” section is a list of complaints that, after careful assessment, Ofcom has decided not pursue because they did not raise issues warranting investigation. Programmes that feature in this list do so only in relation to the specific issues raised by the complainants/s in question. In this case, the complaints about Qatar Airways sponsorship credits reported by Ofcom as “Assessed/Not Investigated” related to different issues than those under consideration in this case. Broadcasters should not therefore take any entry in this list to mean that Ofcom has in any way “approved” content as a whole.

Sky also suggested that because Rule 9.20 of the Code states sponsorship credits “must be broadcast at the beginning and/or during and/or end of the programme” it was not required to broadcast an opening sponsorship credit that identified the sponsor or sponsorship arrangement. However, this is not the purpose of Rule 9.20 which provides broadcasters and sponsors with the flexibility to decide where sponsorship credits are placed in sponsored programming. The guidance to the Code makes it clear that “no rule should be read in isolation but within the context of the whole Code”³. Rule 9.20 must be read in conjunction with the preceding rule, Rule 9.19, which requires that sponsorship credits must make clear the identity of the sponsor and the association between the sponsor and sponsored content.

Ofcom does not consider Rules 9.19 and 9.20 to be ambiguous. Ofcom’s guidance sets out clearly what is expected from broadcasters in relation to these rules. The guidance which accompanies Rules 9.19 states:

“Viewers should be told when a programme is sponsored and who the sponsor is. The sponsor’s association with the sponsored content must be clear to the audience in all sponsorship credits [emphasis added]. Broadcasters are free to use various and different creative messages to identify sponsorship, for example: “sponsored by...”; “in association with...”; “brought to you by...”. However, care should be taken to avoid ambiguous statements that may lead to viewer confusion over the nature and purpose of the announcement.”

³ Para 1.4, Introduction, Guidance on Section Nine of the Broadcasting Code (2011) Commercial references in television programming, Page 3, <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In Ofcom's view, because information to identify the sponsorship arrangement was not included in the ten second opening credits, the distinction between advertising and sponsorship was not sufficiently distinct in the Qatar Airways credits. The opening credits included the Qatar Airways logo and created thematic links between weather conditions at various locations served by Qatar Airways and services on board Qatar Airways flights, but it did not clarify the sponsorship association to the viewer. In Ofcom's view the ten second opening credits had the appearance of advertisements, and therefore had the potential to confuse viewers because they did not identify the sponsorship arrangement.

We noted that Sky sought to argue that Ofcom had not provided any evidence of viewer confusion or harm. However, a breach of Rule 9.19 does not rely on such evidence. The rule is a clear requirement that sponsorship credits must identify the sponsor and its association with the sponsored content. This requirement is derived directly from the AVMS Directive. As noted in the Introduction to these sponsorship credit Findings, the European Commission has expressed a particular interest in compliance with the Directive's requirements around sponsorship credits and regularly monitors Member States' enforcement of them.

In this case the association between the sponsor and the sponsored content was not made clear in the opening Qatar Airways credits, in breach of Rule 9.19(b).

Breaches of Rule 9.19(b)

In Breach

Sponsorship of Let Us Talk About Hinduism by Charantia Karela Capsules

MATV, 19 August 2012

Introduction

MATV is a news and family entertainment television channel aimed at the Asian community in the UK. The Licensee for MATV is Middlesex Broadcasting Corporation Limited (“MATV” or “the Licensee”).

The programme *Let Us Talk About Hinduism* was sponsored by Charantia Karela Capsules, which is a food supplement supplied by Multilinks Healthcare Products. The product contains a powdered fruit called Momordica Charantia, commonly known as balsam pear, bitter melon, bitter gourd, ampalaya or karela.

We noted that the sponsorship credit for Charantia Karela Capsules included the voiceover:

“This programme is sponsored by Multilinks Healthcare products.”

The sponsorship credit included pictures of the karela fruit and images of the product packaging and capsules, with on-screen captions “Made in UK” and “No side effects”. The product packaging showed the text: “Charantia Karela Capsules” and “Helps to Maintain A Healthy Lifestyle”.

The credit then displayed the Multilinks Healthcare Products trade mark, the product packaging, and a picture of a family with the on-screen text: “Multilinks Healthcare Products”, “Charantia Karela Capsules Help To Maintain A Healthy Lifestyle”, “www.multilinks.co.uk”, “sales@multilinks.co.uk”, and the telephone number.

Ofcom considered that the sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom therefore wrote to the Licensee asking for formal comments on how the sponsorship credit complied with Rule 9.22(a) of the Code.

Response

The Licensee confirmed that the sponsorship credit is no longer broadcast on MATV. However, it said that in its view the credit had not been in breach of the Code.

MATV submitted that the phrase “*Healthy life style*” was a general term that did not give medical advice, and that it was included in the credit to suggest that consumption of the product “helps to lead a healthy lifestyle” and was “just like a slogan & not there to attract any sales”.

MATV also suggested that the website address was provided so that potential customers could obtain background information about a product that is not well known in the UK. The Licensee also noted that the sponsorship credit did not include sales information such as pricing or details of sales outlets.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Ofcom acknowledged that the sponsorship credit identified the sponsorship arrangement with Charantia Karela Capsules by using the voiceover “*This programme is sponsored by Multilinks Healthcare products*”. However, Ofcom considered that the on-screen text “*Helps to Maintain A Healthy Lifestyle*”, “*Charantia Karela Capsules Help To Maintain A Healthy Lifestyle*”, and “*No side effects*” raised a number of issues under Rule 9.22(a).

Ofcom considered that these phrases amounted to health claims by the sponsor about the benefits of using its product, and were therefore advertising messages which are prohibited in sponsorship credits.

Ofcom's guidance¹ accompanying Rule 9.22(a) makes clear that claims about a sponsor's products are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. The guidance states that examples of claims include "claims about ...health benefits".

Ofcom was also concerned that the credit included the sponsor's email address for sales in the on-screen text, in addition to other contact information. Ofcom's guidance makes clear that no more than basic contact information for the sponsor can be provided in sponsorship credits. Ofcom considered that the inclusion of an email address specifically for sales of the sponsor's product was not acceptable.

Ofcom considered that the inclusion of the claims detailed above, and the inclusion of sales details, resulted in the sponsorship credit breaching Rule 9.22(a).

Breach of Rule 9.22(a)

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In Breach

Sponsorship of Indian Idol and Saas Bina Sasural by Lycamobile

Sponsorship of Indian Idol by Al Murad Tiles, Remit2India, The City Pavilion, and Saavn Music

Sony TV Asia, 25 June 2012 to 24 July 2012, various dates and times

Introduction

Sony Entertainment Television (“SET” or “the Licensee”) broadcast a number of sponsorship campaigns on its channel, Sony TV Asia, between 25 June and 24 July 2012. These sponsorship campaigns included Lycamobile, Al Murad Tiles, Remit2India, The City Pavilion and Saavn Music.

Lycamobile

Lycamobile is a mobile phone virtual network that sells international pay-as-you-go SIM cards to consumers wanting to make international telephone calls. Ofcom noted that the brief sponsorship credits for Lycamobile included the voiceovers:

“Saas Bina Sasural presented by Lycamobile; call the world for less.”

“Indian Idol presented by Lycamobile; call the world for less.”

The on-screen visual for both credits was the Lycamobile brand name and tagline *“Call the world for less”*.

Al Murad Tiles

Al Murad Tiles is an independent ceramic tile and stone importer and retailer. It has stores and franchises throughout the UK and a large distribution warehouse. We noted that the sponsorship credit for Al Murad Tiles included the voiceover:

“In association with Al Murad; inspired tiling ideas for your home.”

The sponsorship credit briefly showed footage of the front of a warehouse which displayed the text *“Distribution warehouse and showroom”* and *“10 Million Tiles in Stock”* on its shop front. The second screen displayed the Al Murad Tiles logo and included the text *“Showrooms at Charlton-Chingford-Croydon-Ilford-Slough-Walthamstow-Luton”* and *“Showrooms Across London; WWW.AL-MURAD.CO.UK”*.

Remit2India

Remit2India is a service that transfers money to India. We noted that the sponsorship credit for Remit2India included the voiceover:

“Remit2India.com; the safer way to transfer money.”

A woman sitting by a desk talking was shown, followed by a static screen with the Remit2India logo and text centre screen *“For more information log on to www.remit2india.com”*.

The City Pavilion

The City Pavilion is a restaurant offering banqueting services. Ofcom noted that The City Pavilion sponsorship credit included the following voiceover:

“The City Pavilion; the ultimate banqueting experience.”

The City Pavilion name was displayed in the centre of the screen with the website address www.thecitypavillion.co.uk. In addition five stars and six logos representing the facilities available at The City Pavilion were displayed on the bottom of the screen.

Saavn Music

Saavn Music is a smartphone application provided by Saavn LLC, a digital distributor of Indian music. Ofcom noted that the Saavn Music sponsorship credit included the following voiceover:

“Saavn Music for iPhone and android.”

Two mobile devices were shown on-screen. The Saavn logo was prominent on the device displayed to the forefront of the screen, and on-screen text included *“Saavn Music; Free on iPhone and Android”*.

Ofcom considered that all of the above sponsorship credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom therefore requested formal comments from the Licensee on how the above sponsorship credits complied with this rule.

Response

SET stated that it had not realised that a “company’s trade mark taglines or catch phrases could not be part of the sponsorship tags”. It had considered taglines were “a part of the company’s trade description – and thus an entitlement of sponsorship”. Further, it explained that it had understood that “[a]s long as there was no call to action – i.e. a phone number” the sponsorship credits would be acceptable.

The Licensee also stated in its response: “We will make sure that the tags that are produced from this day forward will not hold any “claims””. It said that it appreciated Ofcom’s assistance in clarifying the rules and confirmed that it has changed all the sponsorship credits.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Lycamobile

Ofcom acknowledged that the sponsorship credit identified the sponsorship arrangement with Lycamobile by opening with the voiceover “*Indian Idol presented by Lycamobile*”. However, Ofcom considered that the sponsor’s tagline “*call the world for less*” was an advertising message because it is a claim by the sponsor that its communication services are less expensive than those of other international call providers.

Ofcom has provided guidance about the use of sponsor’s slogans and straplines in sponsorship credits. Ofcom’s guidance¹ accompanying Rule 9.22(a) states that: “[I]t is possible for some sponsors’ slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services (e.g. by featuring claims).”

In this case, Ofcom therefore considered that the inclusion of the sponsor’s tagline in the voiceover and on-screen text resulted in the sponsorship credit being in breach of Rule 9.22(a).

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

Al Murad Tiles

Ofcom noted that the sponsorship arrangement was identified by means of the voiceover *“Indian Idol presented by Lycamobile and Al Murad Tiles”*. However, Ofcom considered that the on-screen visuals which showed footage of the outside of the sponsor’s warehouse and displayed the text *“10 Million Tiles in Stock”* was an advertising message because it promoted the size of the sponsor’s range of products. In addition the on-screen text *“Showrooms at Charlton-Chingford-Croydon-Ilford-Slough-Walthamstow-Luton”* and *“Showrooms Across London; WWW.AL-MURAD.CO.UK”* provided details about the availability of the sponsor’s products that went beyond a description of the sponsor’s products for the purpose of identifying the sponsor or sponsorship arrangement.

Ofcom’s guidance accompanying Rule 9.22(a) sets out that claims about a sponsor’s products or services are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. This includes: “[T]he use of promotional language and/or superlatives to describe the sponsor and/or its products or services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor’s product is to use).”

In this case, Ofcom therefore considered that the information provided in the on-screen visuals, namely the claim about the number of tiles in stock, and details about the various locations where the sponsor’s products could be purchased, resulted in the sponsorship credit breaching Rule 9.22(a).

Remit2India

Ofcom acknowledged that the sponsorship arrangement was identified via the message *“In association with.....Remit2India”*. However, in our view, the phrase *“the safer way to transfer money”* is a claim about the benefits of the sponsor’s service and therefore an advertising message, which is prohibited under Rule 9.22(a). In addition the on-screen text *“For more information log on to www.remit2india.com”* is a call to action to contact the sponsor. While it may be acceptable to include a sponsor’s details to help the viewer identify the sponsor, inviting viewers to contact the sponsor in this way is not permitted under Rule 9.22(a).

Ofcom’s guidance accompanying Rule 9.22(a) states that: “[C]redits that contain direct invitations to the audience to contact the sponsor are likely to breach the code. However basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor.”

In this case, Ofcom therefore considered that the Remit2India credit was in breach of Rule 9.22(a) because the voiceover included a claim, and the on-screen text included a call to action.

The City Pavilion

The City Pavilion sponsorship credit included the phrase *“the ultimate banqueting experience”*. In Ofcom’s view this is a claim about the sponsor’s banqueting services, in breach of Rule 9.22(a). A sponsorship credit can include a description of a sponsor’s services for the purpose of identifying it or the sponsorship arrangement but using a phrase that makes a claim about the quality of that service is not acceptable.

Ofcom's guidance accompanying Rule 9.22(a) sets out that claims about a sponsor's products or services are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. This includes "the use of promotional language and/or superlatives to describe the sponsor and/or its products or services".

In this case, Ofcom therefore considered The City Pavilion sponsorship credit to have breached Rule 9.22(a).

Saavn Music

Ofcom noted that the Saavn Music sponsorship credit included the voiceover "*Saavn Music for iPhone and android*" and included the text "*Saavn Music; Free on iPhone and Android*". Ofcom considered that by including the text "*free on iPhone and android*" the sponsorship credit included a promotional offer and therefore an advertising message, in breach of Rule 9.22(a).

Conclusion

Ofcom was particularly concerned in this case that the Licensee had admitted that it had not fully understood the requirements of the Code in this area. Ofcom's detailed guidance to Rule 9.22(a) makes very clear the scope and application of the rule in all the areas covered by this Finding. Ofcom therefore welcomes the Licensee's confirmation that it is reviewing its existing credits and will apply improved compliance for future credits. Nevertheless, we are putting SET on notice that we will continue to monitor the compliance of its sponsorship credits with Rule 9.22(a).

Breaches of Rule 9.22(a)

In Breach

Sponsorship of Fresh Hits by Payment Protection Refunds

Brit Asia TV, 25 June 2012 and 24 July 2012, various dates and times

Introduction

Brit Asia TV is a music channel aimed at young British Asians. At the time of broadcast the licence for Brit Asia TV was held by Mr D S Bal (“the Licensee”).¹

Between 25 June and 24 July 2012 the programme *Fresh Hits* was sponsored by Payment Protection Refunds which is a business that provides a service for mis-sold payment protection policies taken out with mortgages, credit cards and store cards.

We noted that the sponsorship credit for Payment Protection Refunds included the voiceover:

“Payment Protection Insurance Refunds; get in touch now on [telephone number].”

A static screen displayed the text “Sponsored by” followed by the Payment Protection Refunds logo, the sponsor’s telephone number and the sponsor’s website address “www.paymentprotectionrefunds.co.uk”. Each digit of the on-screen telephone number was highlighted at the same time it was spoken in the voiceover.

Ofcom considered that the sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products of services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom therefore wrote to the Licensee asking for formal comments on how the sponsorship credit complied with Rule 9.22(a) of the Code.

Response

No comments were received.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom

¹ On 30 January 2013 the licence for Brit Asia TV transferred from Mr D S Bal to Brit Asia TV Limited.

with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Ofcom has published detailed guidance² to assist broadcasters in their compliance with Section Nine of the Code. The guidance accompanying Rule 9.22(a) explicitly states that: “[C]redits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor.”

In this case, we noted that the Payment Protection Refunds credit included the voiceover “*get in touch now on* [telephone number]”. Ofcom considered this to be a clear call to action, in breach of Rule 9.22(a).

Breach of Rule 9.22(a)

² See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In Breach

Sponsorship of Badi Picture by Himalaya Carpets

Star Gold UK, 25 June 2012 to 24 July 2012, various dates and times

Sponsorship of Satyamev Jayate by Claim Today Solicitors

Star Plus UK, 25 June 2012 to 24 July 2012, various dates and times

Introduction

Star India PVT Ltd (“Star TV” or “the Licensee”) broadcast a number of sponsorship campaigns on its channels, Star Gold UK and Star Plus UK, between 25 June and 24 July 2012. These sponsorship campaigns included Himalaya Carpets on Star Gold UK and Claim Today Solicitors on Star Plus UK.

Himalaya Carpets

Himalaya Carpets is a London-based family-run independent carpet retailer. Ofcom noted that the brief sponsorship credit for Himalaya Carpets included the voiceover:

“Badi Picture sponsored by: Himalaya Carpets; tradition of quality carpets.”

Himalaya Carpets’ brand name, telephone number and website address were shown on-screen.

Claim Today Solicitors

Claim Today Solicitors is a part of DBS Law Ltd which deals in accident compensation claims on behalf of individuals who have suffered injuries. We noted that the sponsorship credit for Claim Today Solicitors included the voiceover:

“Powered by Claim Today Solicitors; don’t delay claim today.”

The sponsorship credit showed a screen split between the Claim Today Solicitors’ animated clock ‘winking’ and giving a ‘thumbs up’ and the text: *“CTS Claim Today Solicitors”* and *“Don’t delay claim today”*.

Ofcom considered that the above sponsorship credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom therefore requested formal comments from the Licensee on how the above sponsorship credits complied with this rule.

Response

Star TV submitted that the credits were in breach of Rule 9.22 and should not have been broadcast. The Licensee stated that it takes its responsibility to comply with the Code extremely seriously and that it was “surprised to see these credits broadcast”. It said that it had robust compliance procedures in place for its UK channels.

Star TV explained that the two sponsorship credits “slipped through” due to a junior inexperienced member of staff failing to follow the proper process for clearing sponsorship credits before broadcast, despite being briefed on the relevant guidelines and process.

The Licensee stated that it had removed the credits as soon as it was made aware of the issue by Ofcom. It apologised for the broadcast of the credits and also stated that it “will continue to closely monitor its internal processes to ensure compliance to the Ofcom Broadcasting Code”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Himalaya Carpets

Ofcom acknowledged that the sponsorship credit identified the sponsorship arrangement with Himalaya Carpets by using the voiceover “*Badi Picture sponsored by: Himalaya Carpets*”. However, Ofcom considered that the sponsor’s tagline “*tradition of quality carpets*” was an advertising message and a claim regarding the quality of the sponsor’s products which is not permitted under Rule 9.22(a).

Ofcom's guidance¹ accompanying Rule 9.22(a) sets out that claims about a sponsor's products or services are likely to be considered as advertising messages and therefore should not be included in sponsorship credits.

In this case, Ofcom therefore considered that the inclusion of the claim in the voiceover resulted in the sponsorship credit breaching Rule 9.22(a).

Claim Today Solicitors

Ofcom noted that the sponsorship arrangement was identified by means of the voiceover "*Powered by Claim Today Solicitors*". However, Ofcom considered the phrase "*don't delay claim today*" used in the voiceover and in the on-screen text was a call to action to use the sponsor's services. While it may be acceptable to include a sponsor's tagline in some circumstances to help the viewer identify the sponsor, making a call to action in this way is not permitted under Rule 9.22(a).

Ofcom's guidance accompanying Rule 9.22(a) states that: "[C]redits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor."

In this case, Ofcom therefore considered that the Claim Today Solicitors credit was in breach of Rule 9.22(a) because the voiceover and the on-screen text included a call to action.

Conclusion

Ofcom was concerned in this case that even though the Licensee appeared to understand the requirements of the Code in this area, and stated it had robust compliance processes in place, the credits had nevertheless been broadcast in error. We noted that Ofcom has previously recorded breaches of the Code in relation to several sponsorship credits that were broadcast between November and December 2009 on Star Plus UK. These were recorded in Broadcast Bulletin 151² as breaches of Rule 9.13³ and included cases which involved similarly promotional messages and calls to action within sponsorship credits.

Ofcom was therefore particularly concerned that in these cases the credits included promotional messages and calls to action. We are therefore putting Star TV on notice that we will continue to monitor the compliance of its sponsorship credits with Rule 9.22(a), and should further breaches occur, Ofcom may proceed to considering further regulatory action.

Breaches of Rule 9.22(a)

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

² Broadcast Bulletin 151, 8 February 2010, <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb151/>.

³ Rule 9.13 was the equivalent rule in the version of the Code that was in force at the time of these 2009 broadcasts.

In Breach

Sponsorship of Penalty by SilverKart

Viasat 6 Hungary, 25 June 2012 to 24 July 2012, various dates and times

Introduction

Viasat Broadcasting UK Limited (“Viasat” or “the Licensee”) broadcast a number of sponsorship campaigns on its channels between 25 June and 24 July 2012. These sponsorship campaigns included SilverKart’s sponsorship of *Penalty* on Viasat 6 Hungary.

SilverKart is a go-karting centre based in Budapest. Ofcom noted that the sponsorship credit for SilverKart included the voiceover:

“The supporter of the programme is SilverKart Budapest – Hungary’s highest quality Go-Kart and Event Centre.”

The credit showed the outside of a building superimposed with an outline drawing of an arch and a racer in a go-kart displaying “1”. The on-screen text was: “*BUDAPEST*” and “*SILVERKART*”.

Ofcom considered that the above sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom therefore requested formal comments from the Licensee on how the above sponsorship credits complied with this rule.

Response

Viasat acknowledged that “an error” had occurred and explained that the phrase “*Hungary’s highest quality*” was the standard message used on SilverKart’s website and associated marketing. The Licensee noted that the credit was brief, made the association between the sponsor and the sponsored programme clear, and did not contain any other messages or images that could be considered promotional.

Viasat submitted that the sponsor’s marketing phrase had been included in the credit because “a new junior member of Viasat Hungary’s sales staff had not followed the usual workflow for sponsorship credit approval”. It stated that the credit was approved for transmission in error and had not been subject to the usual compliance procedures.

The Licensee said that as a result of this error it had immediately implemented new training to supplement the bi-annual training it undertakes to ensure compliance with the Code. In addition it stated that “all workflows in relation to sponsorships have been reviewed and amended to eliminate the possibility of a reoccurrence of this error”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services Directive (“the AVMS Directive”) requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The AVMS Directive also limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

Ofcom acknowledged that the sponsorship credit was brief and identified the sponsorship arrangement with SilverKart by using the voiceover “*The supporter of the programme is SilverKart Budapest*”. However, Ofcom considered that the voiceover “*Hungary’s highest quality Go-Kart and Event Centre*” was a claim about the quality of the sponsor’s service, which is not permitted under Rule 9.22(a).

Ofcom’s guidance¹ accompanying Rule 9.22(a) sets out that claims about a sponsor’s products or services are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. This includes “the use of promotional language and/or superlatives to describe the sponsor and/or its products or services”.

In this case, Ofcom therefore considered that the inclusion of the claim in the voiceover resulted in the sponsorship credit breaching Rule 9.22(a).

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

Conclusion

Ofcom noted that it has previously recorded five breaches of the Code in relation to several sponsorship credits that were broadcast between January and August 2009 on TV3 (Sweden), another channel owned and operated by Viasat. These were recorded in Broadcast Bulletin 146² as breaches of Rule 9.13³ and included cases which involved the inclusion of similarly promotional messages in sponsorship credits. Following these cases Ofcom met with Viasat in July 2010 to discuss its compliance with Rule 9.13.

Ofcom was therefore particularly concerned that in this case the credit included a clearly promotional message. We are therefore putting Viasat on notice that we will continue to monitor the compliance of its sponsorship credits with Rule 9.22(a), and should further breaches occur, Ofcom may proceed to considering further regulatory action.

Breach of Rule 9.22(a)

² Broadcast Bulletin 146, 23 November 2009,
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb146/>.

³ Rule 9.13 was the equivalent rule in the version of the Code that was in force at the time of these 2009 broadcasts.

Other Standards Cases

In Breach

Provision of recordings

DM Digital, October 2012

Introduction

DM Digital is a television channel primarily aimed at an Asian audience in the UK, which features broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The service is also received in the Middle East and parts of Asia. The licence for this channel is held by DM Digital Television Limited (“DM Digital” or “the Licensee”).

A complainant alleged that DM Digital advised him that it would broadcast a charity appeal for his charity in return for a “donation” to the channel of £5,000.

Charity appeals are allowed in programming only if they are broadcast free of charge. If a broadcaster charges a charity for broadcasting an appeal then it is advertising and must be included in the broadcaster’s calculation of its advertising minutage.

Ofcom noted that DM Digital’s website stated that DM Digital provides special advertising packages for fundraising and charity appeals. Ofcom asked DM Digital for further information.

DM Digital stated that it does not ask charities to donate money to the channel in return for free airtime for charity appeals. With regard to its special advertising packages for fundraising and charity appeals, DM Digital explained that for a three hour broadcast its rates are £2,500 for a daytime slot and £3,000 for a peak evening slot. It explained that the difference in cost was because charities will receive greater exposure in peak time slots. The charge covers production costs, as well as the use of a call centre facility and staff costs.

Rule 4 of Code on the Scheduling of Television Advertising (“COSTA”) states that: “[T]ime devoted to television advertising and teleshopping spots on any channel in any one clock hour must not exceed 12 minutes.”

To determine whether DM Digital had been exceeding its advertising allowance by broadcasting charity appeals which were paid-for advertisements, Ofcom asked DM Digital to provide recordings of the most recent charity appeal broadcast on DM Digital in both a daytime slot and in an evening slot in its schedule.

Ofcom twice requested the two recordings from the Licensee. The Licensee did not acknowledge either of the requests, nor did it provide the two requested recordings.

Ofcom considered the case raised issues warranting investigation under Condition 11(2)(b) of DM Digital's Television Licensable Content Service (TLCS) licence, which states that:

"11 (2) In particular the Licensee shall:

- ...
- (b) At the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction."

Ofcom therefore asked DM Digital for its comments under this Licence Condition.

Response

The Licensee explained that upon receiving Ofcom's Preliminary View on the matter it had sent the requested recording to Ofcom. Ofcom did not receive the recording. When the Licensee received Ofcom's draft Decision on the case it sent a duplicate recording which was received by Ofcom. This recording contained one charity appeal but the date and time of the appeal was not provided.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring that the licensee: retains recordings of each programme broadcast in a specified form and for a specific after broadcast; and complies with any request by Ofcom to produce such recordings.

Under Licence Condition 11(2)(b) licensees are required to provide recordings. Failure by a licensee to provide the correct recordings when requested by Ofcom is a significant breach of Licence Condition 11(2)(b).

Breaches of Licence Condition 11(2)(b) are potentially serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

In this case DM Digital failed to provide the two recordings which Ofcom required upon request.

When the Licensee eventually provided a recording to Ofcom, it contained one undated charity appeal. It had failed to provide this recording "forthwith" within the deadlines which Ofcom set, in breach of Condition 11(2)(b) of its TLCS licence.

Further, Ofcom had requested two recordings: one of the most recent charity appeal broadcast in a daytime slot, and one of the most recent charity appeal broadcast in an evening slot in its schedule. As the Licensee had only provided one recording, it was therefore in breach of Condition 11(2)(b) of its TLCS licence for failing to provide a recording of a broadcast requested by Ofcom.

Ofcom has recorded two previous breaches of Licence Condition 11(2)(b) against DM Digital for its failure to provide recordings to Ofcom and a further breach of the same Licence Condition for its delay in providing recordings to Ofcom¹.

In the case of the breach recorded against DM Digital on 10 May 2010, Ofcom stated in its finding that it had carefully considered whether to recommend that particular case for consideration of the imposition of a statutory sanction. On balance, however, it decided not to do so in that instance. However, Ofcom put DM Digital on notice that it must take all necessary and appropriate measures to ensure it complies with Condition 11 of its licence in the future and that further breaches of this nature Ofcom may be considered for further regulatory action.

In view of DM Digital's repeated breaches of TLCS Licence Condition 11(2)(b), DM Digital is put on notice that the breaches of Licence Condition 11(2)(b) recorded in this Finding are being considered by Ofcom for the imposition of a statutory sanction.

Breach of TLCS Licence Condition 11(2)(b)

1

- *Baba Ji Online*, DM Digital, 13 May 2009, 11:00. See Broadcast Bulletin 147, 7 December 2009 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb147/issue147.pdf>).
- *Chal Sitaroon Ki*, DM Digital, 18 February 2010, 13:00. See Broadcast Bulletin 157, 10 May 2010 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb157/issue157.pdf>).
- Islamabad Grill sponsorship of *Zaika he Zaika*, DM Digital, Broadcast Bulletin 169, 8 November 2010 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>).

In Breach

The Valleys (Trailer)

MTV Base, 14 September 2012, 10:10 (and also on other MTV channels at various times pre-watershed, between 28 August 2012 and 9 October 2012)

Introduction

The Valleys, a reality series which started on MTV in September 2012, featured a group of nine young people from the valleys in south Wales brought together in a house in Cardiff hoping to achieve their ambitions. The pre-watershed trailer for this new series was shown across MTV channels. It explained the format of the series and introduced the characters of the nine young people featured.

A complainant alerted Ofcom to the trailer when shown on the morning of 14 September 2012 because of concerns regarding the sexual tone of its content. The complainant considered it to be unsuitable for broadcast during the day when children were available to view.

On reviewing the trailer, Ofcom noted that it was about 30 seconds long. It included images edited together in quick succession of a house party where the nine young people from the valleys were partying energetically with one another.

The voiceover at the end of the trailer said: *“Can these nine party animals make it in Cardiff or will they just end up back in the valleys? Brand new reality starts Tuesday 25th September only on MTV.”*

Ofcom noted that the brief images in the trailer included those of:

- a woman, shot from the back, appearing to kiss a man’s nipple as he pulls his shirt up;
- a man lifting his t-shirt and flexing his chest muscles and a close-up shot of a woman, wearing a low-cut dress revealing her cleavage, flexing her breasts;
- a man and a woman kissing one another as she strokes her hand down his side and then a shot of the two of them walking towards a room or corridor;
- two women play-fighting in a bathroom with foam; and
- two women kissing as they are filmed on a mobile phone.

Ofcom considered the material raised issues warranting investigation under Rule 1.3 of the Code, which states:

“Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

We therefore sought comments from MTV Networks Europe (“MTV” or “the Licensee”) as to how the material complied with this rule.

Response

MTV stated that it considered the trailer suitable for broadcast pre-watershed. The Licensee said that the trailer was viewed by the compliance team on several occasions and discussed extensively. The aim was to ensure the trailer struck the balance between the necessary protection of under-eighteens, the provisions of the

Code and conveying the nature of the series to the audience. None of the scenes or individual shots featured in the trailer came from any episode of the series. It was shot purely for promotional purposes with the specific intention of making a trailer suitable for broadcast pre-watershed.

The Licensee stressed that it was “mindful that trailers come into the audience’s home unbidden and that their short duration affords little opportunity to create context”. In this case, the Licensee did not consider that there were any scenes in the trailer that needed specific contextualisation because the scenes in question were nothing more than “harmless fun”. The scenes were “not obscene or explicitly sexual in any way” and they were “very brief and limited by the very nature of the trailer”.

With regard to the specific scenes referred to by Ofcom (see bullet points above in the Introduction), the Licensee stated that it was not clear that a woman was kissing a man’s nipple and in any event there was no “untoward sexual significance to the scene that would prevent it from a pre-watershed transmission”. MTV said that the scenes featuring kissing between a man and woman and two women kissing were also suitable for pre-watershed viewing. Finally, the woman flexing her “chest muscles” was done “in a jovial exchange” with the man who flexed his muscles before her and was “devoid of sexuality”.

MTV confirmed to Ofcom that the trailer was also shown across all MTV channels at various times pre-watershed between 28 August and 9 October 2012.

Following notification of Ofcom’s Preliminary View in this case that Rule 1.3 was breached, MTV made further representations: (i) regarding Ofcom’s Preliminary View; and (ii) in response to a recent decision of the Advertising Standards Authority (“ASA”), with regard to an advertisement for the series shown on other television services.

In response to Ofcom’s consideration of the overall suitability of the images in the trailer to be broadcast pre-watershed, MTV questioned whether all of the images (as summarised in the Introduction above) were sexual. MTV stated that “to categorise the shots in the trailer as “adult” and creating “an unmistakable sexual tone” was excessive”. In conclusion the Licensee stated that of the five images highlighted by Ofcom only two of the images featuring kissing had any sexual element to them, and in their view two shots were not enough “to create a strong sexual impression that requires post-watershed scheduling”. In conclusion, MTV argued that the overarching impression was of the cast “having a good time at a party” and there was “nothing untoward in adults having mild and inexplicit contact”. In terms of protecting children, the broadcaster added that they found “it hard to see what harm playfulness of this nature could do”.

MTV said the ASA decision (published on 9 January 2013, shortly after MTV had been notified of Ofcom’s Preliminary View¹) concerned an advertisement which “contained slightly stronger imagery than the trailer”. This ASA adjudication, according to MTV, “decided that it [the advertisement] should have been given a 7.30pm restriction”, i.e. so that it could be broadcast on television services after

¹ See: http://www.asa.org.uk/Rulings/Adjudications/2013/1/MTV-Networks-Europe/SHP_ADJ_209291.aspx.

19:30 in compliance with the BCAP Code. MTV therefore expressed surprise that, based on MTV's interpretation of the Preliminary View, Ofcom considered that this "trailer should only be broadcast after the [21:00] watershed". MTV said it was "left slightly confused by these two regulatory outcomes".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "persons under the age of eighteen are protected". This objective is reflected in Section One of the Code.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom has issued guidance in relation to Rule 1.3 which includes advice on the scheduling of trailers². In this guidance we emphasised the importance of ensuring that "trailers for post-watershed content scheduled pre-watershed include only content that is appropriate for a pre-watershed audience". This is particularly important because viewers come across trailers unawares and broadcasters are unable to provide any context or warning to viewers in advance about the material they are about to see.

Ofcom first assessed whether this trailer contained material unsuitable for children.

Ofcom considered that the brief images in the trailer (as set out in the Introduction), when assessed individually and in isolation, were not necessarily inappropriate for broadcast before the watershed. In principle, for example, a scene featuring kissing between people, of either or of the same gender, does not necessarily raise issues under the Code when broadcast pre-watershed.

Ofcom noted that several of the edited images in the trailer showed physical interactions between the young people featured in *The Valleys*. It was this interaction which, in Ofcom's opinion, created an implicit but unmistakable sexualised tone with the purpose of reflecting the adult editorial nature of the post-watershed series. For example, Ofcom noted: the two women kissing; the man and woman kissing while the woman strokes the man's torso in a suggestive manner; the woman appearing to kiss a man's nipple; and the woman flexing her breasts in a low-cut dress in response to a man flexing his chest muscles. There was no nudity but Ofcom noted that there were images of a man's naked torso, a woman's cleavage, and women wearing skimpy party dresses. In Ofcom's view, the cumulative effect of the scenes in this trailer, when viewed together, resulted in a clear adult tone which was in general unsuitable for a pre-watershed audience, and which meant that the trailer required very careful scheduling if it was to comply with the Code.

Ofcom has noted MTV's arguments regarding the Preliminary View that individually the images highlighted did not amount to a strong sexual impression. Ofcom

² See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

acknowledges that when the shots were viewed and assessed individually and in isolation they were not necessarily unsuitable for children. However, when viewed one after the other, as edited together in the trailer, the cumulative impact of these images where there was touching and physical interaction was undoubtedly sexualised and unsuitable for children.

Ofcom then went on to consider whether this material was appropriately scheduled.

This trailer was broadcast up to 28 times in total, at various times throughout each day, with no scheduling restrictions, between 28 August and 9 October 2012. Ofcom therefore noted that this content, which contained an adult sexualised tone throughout, was available to view by children, particularly in the daytime at weekends and during the extended summer holidays, when some may have been unaccompanied.

This trailer was broadcast pre-watershed but created to promote a post-watershed programme aimed at an adult audience and containing adult themes. We also noted that as this was a programme trailer it was not signposted in advance to viewers. As a result they would have come across it unawares, and there was no specific editorial justification or context to provide sufficient justification for the images used (for example as might occur within a drama or documentary).

Ofcom noted the ASA adjudication referred to by MTV about a broadcast advertisement for *The Valleys* shown on various television services. It is not Ofcom's role, but that of the ASA, to assess broadcast advertisements against the BCAP Code and Ofcom did not seek to compare the trailer against the broadcast advertisement. We therefore cannot comment on whether or not as MTV contends the advertisement "contained slightly stronger imagery than the trailer". Ofcom notes however that in its adjudication the ASA stated that: "We considered that the overall tone of the ad was sexual. We therefore considered that the ad was not suitable for broadcast when younger children might be watching. We concluded that the ad was not suitable for broadcast before 7.30pm."

Ofcom does not consider there is any conflict between its decision in this case and the ASA's adjudication. The two regulators have applied different regulatory codes to different pieces of broadcast content. Nonetheless, it can be seen from the decisions that both regulators consider that the tone of the content was sexual and was not suitable for children.

Ofcom noted that this trailer was broadcast across a number of MTV services at various times throughout the day and during the summer holidays. Ofcom did not consider it proportionate or necessary in this case to assess each broadcast of the trailer individually. Having considered the points raised by MTV, however, Ofcom's view is that the trailer was inappropriately scheduled when it was broadcast at times when it was likely that children, and especially younger ones, would be watching (some of them unaccompanied) – during the daytime in particular. When broadcast at these times the trailer breached Rule 1.3.

Broadcasts of the trailer however may have been appropriately scheduled when shown later in the evening relatively closer to the 21:00 watershed when children were less likely to view.

Ofcom expects broadcasters to ensure that the content featured in a pre-watershed trailer is suitable for children to view, or if its suitability is at all in doubt that it must be appropriately scheduled to reflect the content of that trailer. Broadcasters are advised to consider carefully whether the cumulative effect of content within a pre-watershed trailer conveys a sexualised and/or adult tone unsuitable for broadcast at that time.

Ofcom concluded that this trailer was not appropriately scheduled so as to protect children and therefore it breached Rule 1.3.

Breach of Rule 1.3

In Breach

Fresh Hits

Brit Asia TV, 6 October 2012, 18:30

Introduction

Brit Asia TV is broadcast on the Sky digital satellite platform and describes itself as a channel “aimed at young British Asians”. At the time of broadcast the licence for Brit Asia TV was held by Mr D S Bal (“the Licensee”).¹

A complainant alerted Ofcom to a music video broadcast at approximately 18:30 which included an offensive image. On assessing the material Ofcom noted the lyrics of the song were in Punjabi and the music video contained a still image lasting about two seconds of dead fetuses. Ofcom sought an independent translation of the lyrics. The title of the song was “Sharam Karo” which means “shame”. The song dealt with various issues related to how Sikhs should conduct themselves and one theme was the practice of aborting female fetuses.

Ofcom considered that the material raised issues warranting investigation under the following rules of the Code:

Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”

Ofcom therefore requested comments from the Licensee on how the inclusion of the image of the dead fetuses complied with these rules.

Response

The Licensee explained that it originally rejected the music video and asked the artist to re-submit it without the “foetal scene”. The Licensee confirmed that the video was re-submitted but unfortunately the channel played the original, unedited video file in error. In response to this incident the unedited version has now been removed from the Licensee’s system and a more robust checking process has been put in place to prevent any recurrence of this type of compliance failure.

The Licensee added that this is the first time it has made such an error in five years of broadcasting, and that it was committed to maintaining professional standards and adhering to the Code at all times.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that children are protected, and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the

¹ On 30 January 2013 the licence for Brit Asia TV transferred from Mr D S Bal to Brit Asia TV Limited.

inclusion of offensive and harmful material.” These objectives are contained in Sections One and Two of the Code.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which provides for the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

Ofcom recognises the right of broadcasters to feature controversial issues (such as abortion) and potentially offensive content in their programming, including music videos. Broadcasters must however ensure that in broadcasting such material they comply with the Code.

Rule 1.3

Broadcasters are required under Rule 1.3 to ensure that children are protected by appropriate scheduling from material that is unsuitable for them.

We considered that the graphic nature of the image of aborted fetuses would have clearly had the potential to cause distress and upset to child viewers, and so was unsuitable for children. Ofcom went on to assess whether this content was appropriately scheduled. This music video was broadcast well before the 21:00 watershed, in a music charts programme. Ofcom therefore considered that there was a material chance that children might be in the audience, some unaccompanied. Featuring an image of this distressing nature in a music video shown in the early evening on this channel was clearly not in line with audience expectations, and especially those of parents. This was implicitly admitted by the Licensee, who said he rejected the music video when it was first submitted for broadcast. The material was therefore not appropriately scheduled.

For these reasons, Ofcom concluded that children were not in this case protected from unsuitable material by appropriate scheduling.

Rule 2.3

Rule 2.3 requires broadcasters, in applying generally accepted standards, to ensure that the broadcast of potentially offensive material is justified by the context.

Including a graphic image of aborted fetuses in a music video shown in the early evening was obviously capable of causing offence. Ofcom therefore considered whether its broadcast was justified by the context. Ofcom noted that the still image of fetuses was linked to the subject matter of the song. This material however appeared abruptly in programming broadcasting a range of music videos and without any specific warning to viewers. In our opinion the majority of viewers of this channel would not have expected such potentially distressing images to be shown in these circumstances. Ofcom therefore considered that the broadcast of this material was not justified by the context.

Ofcom noted the Licensee's admission that the version of the music video which was shown had originally been rejected and was broadcast in error. Ofcom also noted the measures the Licensee took after the broadcast to improve compliance in future. The error however resulted from a significant compliance failure, and the measures taken by the Licensee are not, in Ofcom's opinion, sufficient for this matter to be resolved.

As a consequence, this content breached Rules 1.3 and 2.3 of the Code.

Breaches of Rules 1.3 and 2.3

In Breach

Senna

Sky Sports F1, 25 November 2012, 12:30

Introduction

Sky Sports F1 is owned and operated by British Sky Broadcasting Limited (“BSkyB” or “the Licensee”). The channel is dedicated to BSkyB’s UK coverage of Formula One, broadcast on the Sky digital satellite platform.

Senna was a documentary film which followed the career of Brazilian Formula One driver, Ayrton Senna. The film was predominantly in English, but included subtitles for those segments in which participants were speaking another language or with a strong accent, or in which the sound was indistinct.

Two complainants alerted Ofcom to uses of the word “fuck” and other variations of this word in the film as broadcast.

Ofcom viewed a recording and noted examples of offensive language spoken in English and appearing simultaneously in subtitles as follows at the times indicated:

- 13:06: *“fucking hell”*
- 13:19: *“there was a big fuck up last year with Ayrton”*
- 13:22: *“I was fucked many times by the system”*
- 13:30: *“Fucking hell! I’ve won!”*

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast before the watershed[.]”

Ofcom therefore requested comments from the Licensee on how the programme material complied with this rule.

Response

The Licensee apologised for its error in broadcasting this language and said it would never set out to deliberately offend viewers. It said processes had been put in place to ensure a similar mistake does not occur again.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed.

The instances of the word “fuck” and other variations of this word were clearly audible and also shown on the screen in the subtitles in this film broadcast at lunchtime. This broadcast therefore breached Rule 1.14.

Breach of Rule 1.14

¹ *Audience attitudes towards offensive language on television and radio*, August 2010, <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

In Breach

Elite Nights

Studio 66 TV 2 (938), 15 July 2012, 03:00 to 03:55

Introduction

Elite Nights is a segment of interactive 'adult chat' advertising content broadcast on the service Studio 66 TV 2 (Sky Channel 938). The service is freely available without mandatory restricted access and is situated in the 'adult' section of the Sky electronic programme guide ("Sky EPG"). 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 while encouraging viewers to contact the PRS numbers.

The licence for Studio 66 TV 2 is owned and operated by 965 TV Limited ("965 TV" or "the Licensee").

Ofcom received a complaint that content on this service, broadcast from 03:00, contained images that were inappropriate on a free-to-air service.

Ofcom noted there were two female presenters on screen at this time. The first female presenter was wearing black shoes, a pair of yellow knickers with "party all night" printed on the back and a black top pulled down to expose her breasts. The second presenter was wearing a pink thong under a pink one-piece outfit, which was pulled down to reveal her breasts. During the broadcast the presenters stroked each other's thighs, buttocks, stomachs and breasts. They also adopted sexual positions, such as on all fours with their buttocks to camera and also lying side by side with their legs intertwined, and while in these positions mimed sexual intercourse, sometimes for quite prolonged periods.

Ofcom considered the material raised issues warranting investigation under BCAP Code Rule 4.2 which states:

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards."

We therefore requested comments from the Licensee as to how this material complied with this rule.

Ofcom also noted that while the female presenters filled most of the screen there were graphics on the right of the screen showing still images of women, all of whom were topless and in some cases naked, although their genitals were obscured. These images were accompanied by short code numbers which viewers could text to receive pictures and video content of the women, for example "TXT XXX to 899**"¹ and "TEXT FERNANDA TO 899**". In the bottom left-hand corner of the screen we noted there were graphics that were text only, such as "FILTHIEST X RATED VID OF THE MONTH! TEXT JULY TO 899**", and "TEXT BABE TO 899**".

¹ In quoting from these promotions Ofcom has substituted asterisks for some of the promoted numbers.

Ofcom was concerned that these promotional references raised issues warranting investigation under BCAP Code Rule 30.3, which states:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

We therefore requested comments from the Licensee as to how this material complied with this rule.

Response

Rule 4.2

The Licensee said: “[H]aving reviewed the output...it is our opinion that although the material raises concerns in regards to Ofcom’s published guidance and our own internal compliance guidelines, the content does not warrant a breach of Rule 4.2 of the BCAP Code.”

965 TV said: “[W]e feel that the material is highly unlikely to “cause serious or widespread offence”...[O]n the contrary, the material is of a type which is widely considered acceptable in today’s society, is very widely accessible and would fall well in line with audience expectation for the time it was schedule[d] and its positioning within the adult section of Sky’s EPG.” It added: “[I]t would be helpful to know how many complaints were received in regards to the broadcast and the nature of the complaints to fully substantiate this argument.”

The Licensee said: “We do agree that when broadcasting content of this nature care needs to be taken to ensure that [it] is handled responsibly and delicately to ensure the overall flavour is not overtly sexual, pornographic or could lead to **serious** or **widespread** offen[c]e.” [Emphasis added by Licensee.]

965 TV added: “Camera positioning and contact was limited to the touching and kissing of the upper body region – the context of which was mildly erotic and playful as opposed to overtly sexual. The material was transmitted on a channel located within the adult section of the Sky EPG...and was fully in line with viewer expectations. The output was transmitted well after midnight...and we feel that taking all of this into account the risk of serious or widespread offence is extremely low.”

The Licensee said: “Although the [content] included fleeting images of suggestive kissing of both lips and upper body parts, as well as movement of a sexy nature, we feel that the overall flavour of the broadcast was flirtatious and sexy as opposed to sexual or in any way pornographic.” The Licensee added: “[O]ur understanding, based upon guidance issued by Ofcom, is that there is no issue with two girls on-screen together.”

965 TV said: “Over the past four years we have implemented numerous changes to our company’s policies (as detailed in previous correspondence) which we feel have helped to ensure that any risk of broadcasting un-compliant material or material that could raise issues under the code is minimised.” The Licensee added: “[W]e are all too aware that at times, especially with live television, mistakes are made which can lead to material which could be considered to be on the line or un-compliant...[H]owever we consistently work hard to try to ensure that mistakes of this nature are kept to an absolute minimum.”

Rule 30.3

The Licensee said: “[W]e would firstly like to assure Ofcom that this was a genuine mistake, as a result of human error. At no time was this content intended for delivery as a TV promotion.” 965 TV said: “As soon as Ofcom brought this matter to our attention we suspended the service in question while we conducted a full investigation into what had occurred.”

The Licensee said that, as required by PhonepayPlus: “[A]nyone who texted in to any of our Adult services would have only received the content if their hand set was age verified with the network operator. A subsequent message asking for [a date of birth] is an additional layer of age verification which relates to a text chat service promoted off the back of the content sale.”

The Licensee explained that more explicit products are available on its website as “part of a range of content available on a subscription basis” and that downloadable content for the website and mobile downloads advertised on the broadcast service are stored on a central server. However, “due to a human error the content intended for download via the broadcast service was inadvertently replaced by the stronger content intended for download via the website”.

The Licensee said that it has since implemented further compliance measures to ensure a similar mistake does not occur again. These include: storing the content intended for internet and TV users on separate servers; ensuring two different people are responsible for uploading the content to each server, both of whom have had further training to ensure they are aware of the different compliance regimes applicable to internet and broadcast content; requiring the staff member responsible for the error to attend an investigation meeting as required by the Licensee’s formal internal disciplinary procedure; and ensuring all new content uploaded to the servers is “checked and signed off by a manager before the service goes live and any advertisement is made on TV”.

965 TV said that it deeply regrets that an error of this nature occurred and offered its sincerest apologies. It added: “[A]lthough we fully accept responsibility for this error and totally share Ofcom’s concerns, we would again like to draw attention to the fact that this content could only have been received by a handset which was age verified by the mobile network operator.”

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and ‘adult chat’ services.

When setting and applying the standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the

European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2

Rule 4.2 of the BCAP Code states: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

On 27 July 2011, Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services².

This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. For example the guidance explicitly states that ‘adult chat’ broadcasters should:

“[T]ake particular care if two or more presenters appear together on screen. If there is any contact between the presenters of an erotic or sexual nature (for example kissing, stroking, or contact between thighs, breasts or genital areas) or any miming or simulation of a sexual act performed by one presenter on another, in Ofcom’s view there is a high risk of causing serious or widespread offence against generally accepted standards.”

Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in ‘adult chat’ advertising content that is available without mandatory restricted access³.

Ofcom noted that in conjunction with the images highlighted above the broadcast included close-up shots of the buttocks of the presenter wearing the pink thong. Further, during the broadcast the presenters on three occasions knelt opposite each other rubbing their bodies, and in particular their bare breasts, against each other. In Ofcom’s view these images were clearly capable of causing offence.

Ofcom noted the Licensee’s argument that the guidance does not prohibit two presenters appearing on-screen together. However, in Ofcom’s view the interaction between the presenters in this broadcast was clearly at odds with Ofcom’s guidance. In particular there was “contact between the presenters of an erotic or sexual nature (for example kissing, stroking, or contact between thighs, breasts or genital areas)”.

² The guidance referred to is Ofcom’s guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services updated and reissued on 27 July 2011. See: <http://stakeholders.ofcom.org.uk/binaries/broadcasting/guidance/bcap-guidance.pdf>.

³ For example:

- *Storm Night*, Storm, Broadcast Bulletin 202, 19 March 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb202/obb202.pdf>.
- *Bluebird Live*, Bluebird 40+, Broadcast Bulletin 198, 23 January 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb1971/obb198.pdf>.

Under BCAP Code Rule 4.2, in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether appropriate scheduling restrictions were applied to this material. Ofcom noted that the content was broadcast well after the 21:00 watershed, and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed. Ofcom also had regard to the fact that this channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the Sky EPG than on other channels in other sections.

However, in this case, given that the images were clearly at odds with Ofcom's guidance, the location of the channel in the 'adult' section of the Sky EPG and the time of the broadcast at 03:00 were not sufficient to ensure serious or widespread offence against generally accepted standards was not caused. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares.

Taking into account the above factors, Ofcom concluded that relevant scheduling restrictions were not applied so as to ensure that the material broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this content should not have been broadcast within the context of 'adult chat' advertising content that was freely available without mandatory restricted access.

Ofcom noted the point submitted by the Licensee with regard to the number of complaints received in relation to the material and its view that the material would be unlikely to cause "serious or widespread offence". Although Ofcom may take account of the number of complaints, the focus of Ofcom's attention when investigating a case is on the potential issues raised. In this case Ofcom has reached a view for the reasons stated above that issues were raised which warranted investigation. Concerning the second point, Ofcom set out above the reasons why we considered that this content did cause serious or widespread offence against generally accepted standards. The fact that only one complaint was received in this case did not affect Ofcom's analysis and conclusion.

Rule 30.3

This rule states that:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only."

Advertisement of a product

In applying BCAP Code Rule 30.3, Ofcom considered first whether these on-screen promotions for downloadable video clips and still images were advertisements for products.

The BCAP Code classifies 'adult chat' advertising content as 'Participation TV', i.e. "long form advertising for direct-response, remote entertainment services that

typically include the possibility of interacting with broadcast content” (see Introduction to BCAP Code, paragraph n.⁴).

Ofcom’s view is that these on screen promotions for downloadable video clips and still images were separate to the ‘adult chat’ advertising content that filled the rest of the screen. In this case we noted the on-screen graphics consisted of: still images of topless and in some cases naked women (although their genitals were obscured); and short code numbers which viewers could text to receive pictures and video content of the women.

In Ofcom’s view these promotions were for standalone products different to the ‘adult chat’ advertising content: short downloadable clips or photographs which could be bought for £3.00 and then viewed on the buyer’s mobile phone or computer. Ofcom considered the on-screen references were clearly advertising these products.

Recognised character of pornography

Ofcom then considered if this material was advertising products that came within the “recognised character of pornography”.

As set out in the Introduction, the still graphics included in these advertisements comprised still images of women, all of whom were topless and in some cases naked. In addition, the on-screen graphics were accompanied by text which included: “*FILTHIEST X RATED VID OF THE MONTH! TEXT JULY TO 899***” and “*TXT XXX to 899***”. This in Ofcom’s view clearly indicated to the viewer that if they texted the relevant word or term to the on-screen short code number they would be provided with access to explicit adult material.

To assess the product being advertised, Ofcom sent a text message to a short code shown on-screen. As a result Ofcom was sent details of a URL which gave access to explicit video images of a female masturbating. Some of these images were in close-up. Further, although we received a text message requesting age verification, we were able to access the explicit sexual content without being required to provide any proof of age. We noted the Licensee’s argument that viewers would only have been able to obtain the video clips and images if their handset had been age-verified by the relevant mobile network operator. However, we considered this did not remove or weaken the duty on the Licensee to ensure that the products advertised on this channel were acceptable on a free-to-air service. In Ofcom’s opinion this explicit sexual material was clearly equivalent to that which would be given a British Board of Film Classification (“BBFC”) R18⁵ rating. Both R18 equivalent content and ‘adult sex material’⁶ are clearly “within the recognised character of pornography”.

Therefore any advertisement for this type of content was prohibited on a free-to-air service without mandatory restricted access, regardless of whether the images featured in the on-screen advertisement were edited or masked in an effort to make

⁴ The BCAP Code: <http://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20BCAP%20pdf/BCAP%20Code%200712.ashx>.

⁵ The BBFC defines ‘R18’ material as: a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults.

⁶ Rule 1.18 of the Ofcom Broadcasting Code defines ‘adult sex material’ as: material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation.

them non-explicit and suitable for broadcast on a freely available service – or whether handsets to which the clips were downloadable had been age-verified by the relevant mobile network operator.

Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only. Section 30 of the BCAP Code states that:

““Behind mandatory restricted access on adult entertainment channels” is interpreted with reference to rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Code carefully restricts the broadcast of ‘adult sex material’ to channels operating with mandatory restricted access and underlines that for this access to be appropriate “measures must be in place to ensure that the subscriber is an adult”.

The service in this case was within the ‘adult’ section of the Sky EPG (and so was an adult entertainment channel), and broadcast promotional references to products within the recognised character of pornography where there were no appropriate protections to protect children from accessing explicit pornographic material (i.e. mandatory restricted access). Rule 1.18 of the Broadcasting Code makes clear in giving the meaning of “mandatory restricted access” that this must consist of “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view [i.e. adults]”. As Ofcom’s assessment of the on-screen promotions demonstrated (see above), we were able to freely access the explicit sexual content which was being advertised without being required to provide any proof of age. These advertisements for products within the recognised character of pornography were therefore shown on these channels without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

Conclusion

Ofcom noted the steps taken by the Licensee to ensure a similar compliance failure does not occur again. However for the reasons set out above, these on-screen promotions of downloadable clips or photographs clearly breached Rule 30.3 of the BCAP Code.

Advertising for pornographic content is not suitable for broadcast at any time on any interactive ‘adult chat’ service available free-to-air, regardless of the type of images broadcast as part of the advertising content.

Breaches of BCAP Code Rules 4.2 and 30.3

In Breach

Studio 66 Nights

Studio 66 TV 1 (912), 13 September 2012, 21:15 to 21:40

Introduction

Studio 66 Nights is a segment of interactive 'adult chat' advertising content broadcast on the service, Studio 66 TV1 (Sky Channel 912). The service is freely available without mandatory restricted access and is situated in the 'adult' section of the Sky electronic programme guide ("Sky EPG"). 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 while encouraging viewers to contact the PRS numbers.

The licence for Studio 66 TV1 is owned and operated by 914 TV Limited ("914 TV" or "the Licensee").

Ofcom received a complaint that content on this service, broadcast shortly after the watershed, contained sexual images that were too strong to be shown at this time.

Ofcom noted a female presenter on screen wearing a pink, sleeveless one-piece outfit. In addition, she wore a white bra under the one-piece outfit and white high-heeled shoes. From around 21:15, and until at least 21:40, the presenter adopted various sexual positions: she sat with her legs open to camera; knelt facing away from the camera; and at various points during the broadcast moved onto all fours with her legs apart and thrust her bare buttocks to mime sexual intercourse. We also noted that the camera focused on her crotch, at various points throughout the broadcast, for varying lengths of time, while she adopted those positions.

For much of the time and when the presenter was talking to callers, the studio sound was muted and music was played over images of the presenter. However the presenter occasionally talked directly to the audience to attract PRS calls and we noted the following statements were broadcast at 21:18 and 21:27 respectively:

"Boys, come on you have got to do better than that, I want your filthy phone calls right now. Like I always say boys, I'm here to be used, abused and absolutely annihilated by you. So let's do this, you sexy things."

"Phil, where did you go? You sound like you know exactly how to work your way around a woman's body... Come and tell me every dirty thing you want to do with me boys and I will tell you every fantasy that I have, every way that I want you to have me."

Ofcom considered this material raised issues warranting investigation under BCAP Code Rule 32.3, which states:

"Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

We therefore requested comments from the Licensee as to how this material complied with this rule.

Ofcom also noted that while the female presenter filled most of the screen there were also graphics on the right of the screen showing still images of women, all of whom were topless and in some cases naked, although their genitals were obscured. These images were accompanied by short code numbers which viewers could text to receive pictures and video content of the women, for example *"TXT BECKY to 899XX. SEE BECKY AT HER FILTHIEST"*, *"HARD ASHLEY VIDS! TEXT ASHLEY TO 899**"*¹, and *"LILLY'S HOT VIDS. TXT LILLY to 899**"*. In the bottom left-hand corner of the screen we noted there were graphics that were comprised of text only, such as: *"EXPLICIT XXX PICS! TOO HOT FOR TV TEXT HOT to 899**"* and *"HARDCORE VIDS TXT HARD TO 899**"*.

Ofcom was concerned that these promotional references raised issues warranting investigation under BCAP Code Rule 30.3, which states:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channel only."

We therefore requested comments from the Licensee as to how this material complied with this rule.

Response

Rule 32.3

The Licensee said: "[H]aving reviewed the output...we agree that this broadcast could be considered to be in breach of Rule 32.3 of the BCAP Code. Although we felt the presenters' attire did not raise significant concerns we do feel that the language used combined with the camera work and the presenters' actions meant that the overall flavour of the broadcast fell short of both our internal guidelines, Ofcom's published guidance and Rule 32.3 of the BCAP Code."

965 TV added: "[W]e would like Ofcom to consider the level of complaints received along with the likelihood that any children may have been watching considering the time (post-watershed) and the channels labelling and positioning."

Rule 30.3

The Licensee said: "[W]e would firstly like to assure Ofcom that this was a genuine mistake, as a result of human error. At no time was this content intended for delivery as a TV promotion." 914 TV said: "As soon as Ofcom brought this matter to our attention we suspended the service in question while we conducted a full investigation into what had occurred."

The Licensee said that as required by PhonepayPlus: "[A]nyone who texted in to any of our Adult services would have only received the content if their hand set was age verified with the network operator. A subsequent message asking for [a date of birth] is an additional layer of age verification which relates to a text chat service promoted off the back of the content sale."

The Licensee explained that more explicit products are available on its website as "part of a range of content available on a subscription basis" and that downloadable

¹ In quoting from these promotions Ofcom has substituted asterisks for the promoted numbers.

content for the website and mobile downloads advertised on the broadcast service are stored on a central server. However, “due to a human error the content intended for download via the broadcast service was inadvertently replaced by the stronger content intended for download via the website”.

The Licensee said that it has since implemented further compliance measures to ensure a similar mistake does not occur again. These include: storing the content intended for internet and TV users on separate servers; ensuring two different people are responsible for uploading the content to each server, both of whom have had further training to ensure they are aware of the different compliance regimes applicable to internet and broadcast content; requiring the staff member responsible for the error to attend an investigation meeting as required by the Licensee’s formal internal disciplinary procedure; and ensuring all new content uploaded to the servers is “checked and signed off by a manager before the service goes live and any advertisement is made on TV”.

914 TV said that it deeply regrets that an error of this nature occurred and offered its sincerest apologies. It added: “[A]lthough we fully accept responsibility for this error and totally share Ofcom’s concerns, we would again like to draw attention to the fact that this content could only have been received by a handset which was age verified by the mobile network operator.”

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and ‘adult chat’ services.

When setting and applying standards in the BCAP Code to ensure that people under eighteen are protected, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 32.3

Rule 32.3 of the BCAP Code states: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant

electronic programme guide (e.g. the 'adult' section); any warnings; and mandatory restricted access.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the "Chat Service Guidance")². This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. In particular, the Chat Service Guidance states that with regard to material broadcast after 21:00 'adult chat' broadcasters should ensure that: "After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive. There should not for example be any miming of sexual acts between 9 and 10pm." The Chat Service Guidance goes on to state:

"Adult broadcasters should:

- not broadcast shots of bare breasts before 22:00;
- at no time broadcast invasive shots of presenters' bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged; [and]
- ensure any sexual language broadcast is restrained, and avoid its use altogether before midnight."

Ofcom has also made clear in numerous previous published Findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed³.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

Ofcom noted that between 21:15 and 21:40 the camera focussed on the presenter's crotch area when her legs were spread open to camera and when she knelt facing away from the camera. In addition she stroked her breasts and inner thighs, adopted various sexual positions and repeatedly mimed sexual intercourse, such as: kneeling on all fours and thrusting her bare buttocks up and down; and kneeling upright and moving her body up and down. The presenter also sat, sometimes for prolonged periods, with her legs open to camera, although her crotch area was obscured at

² See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

³ For example:

- *ChatGirl TV*, Adult Channel, Broadcast Bulletin 201, 5 March 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2001/obb201.pdf>.
- *Get Lucky*, Get Lucky TV, Broadcast Bulletin 204, 23 April 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb204/obb204.pdf>.
- *Storm Night*, Storm, Broadcast Bulletin 213, 10 September 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf>.

times by the on-screen graphic showing the premium rate number. We noted that the presenter made the statements at 21:18 and 21:27 set out above, when she was kneeling on all fours with her buttocks angled to camera and sat with her legs wide open to camera, respectively.

In Ofcom's view, these images, combined with the on-screen graphics of women with bare breasts and the sexual language noted above used on occasions, resulted in the material being sexually provocative in nature. This behaviour and imagery is clearly prohibited by the Chat Service Guidance. Therefore Ofcom concluded that this material was clearly unsuitable for children.

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access in the period very soon after the 21:00 watershed, when children may have been available to view, some unaccompanied by an adult.

Further, although Ofcom may take account of the number of complaints, the focus of Ofcom's investigations is always the potential issues raised.

Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access directly after the 21:00 watershed. In Ofcom's opinion, viewers (and in particular parents) would not expect the material described above (in particular the combination of images of topless women, close-up images of the presenter's genital area, her miming of sexual intercourse, and sexual language) to be broadcast and available to view in advertising content so soon after 21:00, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult chat' so soon after the 21:00 watershed.

Ofcom noted the points submitted by the Licensee with regard to the number of complaints received in relation to the material and the number of children likely to have been watching. Although Ofcom may take account of the number of complaints, the focus of Ofcom's attention when investigating a case is on the potential issues raised. In this case Ofcom has reached a view for the reasons stated above that issues were raised which warranted investigation. Concerning the second point, Ofcom set out above the reasons why we considered relevant timing restrictions were not applied to this advertising content. The fact that only one complaint was received in this case did not affect Ofcom's analysis and conclusion.

This broadcast was therefore in breach of BCAP Code Rule 32.3.

Rule 30.3

This rule states that:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

Advertisement of a product

In applying BCAP Code Rule 30.3, Ofcom considered first whether these on-screen promotions for downloadable video clips and still images were advertisements for products.

The BCAP Code classifies 'adult chat' advertising content as 'Participation TV', i.e. "long form advertising for direct-response, remote entertainment services that typically include the possibility of interacting with broadcast content" (see Introduction to BCAP Code, paragraph n.⁴).

Ofcom's view is that these on-screen promotions were separate to the 'adult chat' advertising content that filled the rest of the screen. In this case we noted the on-screen graphics consisted of still images of women and short code numbers which viewers could text to receive pictures and video content of the women.

In Ofcom's view these promotions for downloadable video clips and still images were for standalone products different to the 'adult chat' advertising content: short downloadable clips or photographs which could be bought for £3.00 and then viewed on the buyer's mobile phone or computer. Ofcom considered the on-screen references were clearly advertising these products.

Recognised character of pornography

Ofcom then considered if this material was advertising products that came within the "recognised character of pornography".

As set out in the Introduction, the still graphics included in these advertisements comprised still images of women all of whom were topless and in some cases naked, although their genitals were obscured. In addition, the onscreen graphics were accompanied by text which included: "*SEE BECKY AT HER FILTHIEST*", "*TOO HOT FOR TV TXT BECKY TO 899***" and "*HARDCORE VIDS! TXT HARD TO 899***". In Ofcom's view this clearly indicated to the viewer that if they texted the relevant word or term to the on-screen short code number they would be provided with access to explicit adult material.

To assess the product being advertised, Ofcom sent a text message to a short code shown on screen. As a result Ofcom was sent details of a URL which gave access to explicit video images of a female masturbating. Some of these images were shown in close-up. Further, although we received a text message requesting age verification, we were able to access the explicit sexual content without being required to provide any proof of age. We noted the Licensee's argument that viewers would only have been able to obtain the video clips and images if their handset had been age-verified by the relevant mobile network operator. However we considered this did not remove or weaken the duty on the Licensee to ensure that the products advertised on this channel were acceptable on a free-to-air service. In Ofcom's opinion this explicit sexual material was clearly equivalent to that which would be given a British Board of Film Classification ("BBFC") R18⁵ rating. Both R18 content and 'adult sex material'⁶ are clearly "within the recognised character of pornography".

⁴ The BCAP Code: <http://www.cap.org.uk/Advertising-Codes/~media/Files/CAP/Codes%20BCAP%20pdf/BCAP%20Code%200712.ashx>.

⁵ The BBFC defines 'R18' material as: a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults.

Therefore any advertisement for this type of content was prohibited on a free-to-air service without mandatory restricted access, regardless of whether the images featured in the on-screen advertisement were edited or masked in an effort to make them non-explicit and suitable for broadcast on a freely available service – or whether handsets to which the clips were downloadable had been age-verified by the relevant mobile network operator.

Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only. Section 30 of the BCAP Code states that:

““Behind mandatory restricted access on adult entertainment channels” is interpreted with reference to rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Code carefully restricts the broadcast of ‘adult sex material’ to channels operating with mandatory restricted access and underlines that for this access to be appropriate “measures must be in place to ensure that the subscriber is an adult”.

The service in this case was within the ‘adult’ section of the Sky EPG (and so was an adult entertainment channel), and broadcast promotional references to products within the recognised character of pornography where there were no appropriate protections to protect children from accessing explicit pornographic material (i.e. mandatory restricted access). Rule 1.18 of the Broadcasting Code makes clear in giving the meaning of “mandatory restricted access” that this must consist of “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view [i.e. adults]”. As Ofcom’s assessment of the on-screen promotions demonstrated (see above), we were able to freely access the explicit sexual content which was being advertised without being required to provide any proof of age. These advertisements for products within the recognised character of pornography were therefore shown on these channels without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

Conclusion

Ofcom noted the steps taken by the Licensee to ensure a similar compliance failure does not occur again. However for the reasons set out above, these on-screen promotions of downloadable clips or photographs clearly breached Rule 30.3 of the BCAP Code.

Advertising for pornographic content is not suitable for broadcast at any time on any interactive ‘adult chat’ service available free-to-air, regardless of the type of images broadcast as part of the advertising content.

Breaches of BCAP Code Rules 32.3 and 30.3

⁶ Ofcom defines ‘adult sex material’ as: material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation.

In Breach

Lorraine

ITV1, 8 November 2012, 08:30

Introduction

Lorraine is a magazine programme broadcast every weekday morning and presented by Lorraine Kelly. The show features interviews with guests and includes other regular segments on news, fashion, dieting, celebrities and cookery.

A2 milk is a type of cow's milk that is naturally high in A2 beta-caseins, and low in A1 proteins. The A2 brand launched this milk in the UK in late October 2012 and ran a promotional campaign for its product in November 2012, targeting women aged 25 to 45.

Ofcom received a complaint about the promotion of A2 milk during *Lorraine* as broadcast by ITV on 8 November 2012. The licence for ITV national breakfast time is held by ITV Breakfast Broadcasting Limited ("ITV" or "the Licensee").

Ofcom noted that, at approximately 45 minutes into the live broadcast, Lorraine Kelly interviewed Dannii Minogue. Ofcom noted that Dannii Minogue has been a guest on the show before, and was involved in an upcoming *Lorraine* feature called "The Little Black Dress Diet".

In the interview which lasted about five and a half minutes in total, Dannii Minogue spent a minute talking about A2 milk in which she referred to:

- the availability of A2 milk in the UK;
- the difficulties some people have consuming regular milk;
- the difference between regular milk and A2 milk; and,
- where A2 milk can be purchased.

The following is a transcript of that part of the interview:

LK *"You must look after what you eat though – do you, sort of, watch what you eat?"*

DM *I do, because I don't train or work out, I'm just lifting the baby – that's my weight work out. I do watch what I eat...Discovered this milk in Australia called A2, it's been a huge success there and it's coming over here and anyone who has ever drunk milk and just got that yucky feeling some...It just doesn't agree with your body.*

LK *Sure.*

DM *It might upset your tummy or lots of people get eczema or skin things from it.*

LK *That's true.*

- DM *Um...It's amazing and obviously I'm conscious with little Ethan you go for your maternal health check-up and they're like dairy! Dairy! You've got to get it in. As a kid I was never able to drink milk, I didn't even eat ice creams, or do any of that because I just felt...*
- LK *You just didn't like it, a lot of people are like that, just don't like the taste.*
- DM *I know so it's...ah...so it's a new thing that's come here. It only has one protein in it. It's one protein that's not GM-modified or anything. They're just special cows.*
- LK [Laughing] *Special cows. Happy cows.*
- DM *I like to think that they're in a field with a red rope around them, and sunglasses, and possibly are right divas. Divas! It's out in the supermarket now.*
- LK *Well that's great, it obviously works."*

ITV confirmed to Ofcom that neither it, the programme producer, nor any person connected with either¹ received payment or other valuable consideration for the inclusion of references to A2 Milk during the programme, and that the references had not been subject to any product placement arrangement.

Ofcom therefore considered the programme material raised issues warranting investigation under Rules 9.4 and 9.5 of the Code which state:

- 9.4 "Products, services and trade marks must not be promoted in programming."
- 9.5 "No undue prominence may be given in programming to a product, services or trade mark. Undue prominence may result from:
- The presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
 - The manner in which a product, service or trade mark appears or is referred to in programming."

We sought formal comments from ITV on how this material complied with these rules.

Response

ITV explained that Dannii Minogue was interviewed by Lorraine Kelly principally to talk about her role in the forthcoming feature "The Little Black Dress Diet" and to discuss various aspects of her personal life and career.

ITV acknowledged that: "Dannii did speak briefly about her recent association with A2 milk, an Australian product containing only A2 protein." ITV said this was discussed in the context of what she ate and her own personal dietary issues and experiences of eating dairy products, although it acknowledged that Dannii Minogue

¹ "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

“was also motivated to talk about A2 milk in the interview because of her commercial relationship with the product”. ITV accepted that the nature of this relationship was not stated explicitly in the interview and explained that when she referred to having “[d]iscovered this milk in Australia”, it was simply a reference to the fact that the product was already well known in Australia and she had used it before she entered into a commercial arrangement to promote it.

ITV explained that the producers of *Lorraine* are “very conscious of the need to avoid undue prominence and product promotion in celebrity interviews and that any references to commercial references of this kind...should be brief”. The Licensee also submitted that prior to the broadcast the production and compliance teams had considered the topics to be discussed in the interview, and had given clear advice to the guest representative that “only a passing reference to Dannii’s commercial relationship with A2 milk could be made” and “therefore it was not anticipated that the guest would seek to discuss particular claimed benefits or properties of the product”. ITV acknowledged that the interview “certainly spent more time on Dannii’s relationship with A2 milk than had been intended or envisaged prior to broadcast” but submitted that this was not as a result of any “lack of care by the broadcaster or presenter in seeking to limit any references appropriately”.

ITV also submitted that Lorraine Kelly’s comment “*Well that’s great, it obviously works*” was intended as a polite acknowledgement of what the guest was saying about her own health and as a “bridge” to move the conversation on, rather than as an endorsement the product.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Article 19 of the EU Audiovisual Media Services Directive (“the AVMS Directive”) requires, among other things, that television advertising is kept visually and/or audibly distinct from programming.

The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other rules, Rules 9.4 of the Code which states that products, services and trade marks must not be promoted in programming. Rule 9.5 of the code prohibits giving undue prominence to a product, service or trade mark in programming.

It is common during magazine programmes for presenters and guests to discuss aspects of the guest’s personal life and career. Often discussion of career developments will involve mentioning book, film or music releases, television programmes, or fashion and beauty lines. However, broadcasters are expected to ensure that any such references are both editorially justified and presented in a way that do not raise concerns under Section Nine of the Code. Any references to commercial products or services should be appropriately limited so as not to become promotional or unduly prominent.

Ofcom noted that Lorraine Kelly asked Dannii Minogue how she looked after herself. The guest confirmed that she watched what she ate and then talked about A2 milk, saying: *“Discovered this milk in Australia called A2, it’s been a huge success there and it’s coming over here and anyone who has ever drunk milk and just got that yucky feeling some...It just doesn’t agree with your body.”* Dannii Minogue then went on to describe various symptoms some people may suffer from if they have an allergy or intolerance to dairy products: *“It might upset your tummy or lots of people get eczema or skin things from it.”* She used the phrase *“It’s amazing”* to describe the product and went on to discuss its availability in the UK: *“[S]o it’s a new thing that’s come here.”* Further to this Dannii Minogue went on to explain how A2 milk differs from regular milk: *“It only has one protein in it. It’s one protein that’s not GM-modified or anything. They’re just special cows.”* In addition the guest said: *“It’s out in the supermarket now.”*

Ofcom noted that Dannii Minogue has a commercial relationship with A2 milk to raise consumer awareness of the produce and to promote it, as made clear on her blog webpage on the tumblr website and other websites². In its response, ITV stated that the guest spoke briefly about her “recent association with A2 milk”. However this association was not made clear in the interview. Indeed, we noted that Dannii Minogue said *“Discovered this milk in Australia called A2”*, which gave the impression that she was making a spontaneous reference to the produce and she did not indicate that she was commercially involved with its promotion. Furthermore, Dannii Minogue said *“It’s amazing”*, which Ofcom considered to be promotional language and an endorsement of the product. In addition Dannii Minogue informed viewers that the product was available to buy in the UK and on sale in UK supermarkets, which encouraged the purchase of A2 milk.

The Licensee asserted that Dannii Minogue’s endorsement of this product was on the basis of her own specific health issues as well as being motivated by her commercial relationship with A2 Milk, and was therefore editorially justified. Ofcom acknowledges that Dannii Minogue was discussing her personal experiences in relation to the consumption of conventional dairy products. However, Ofcom also took into account that Dannii Minogue is paid to promote A2 milk. The product was launched in the UK in late October 2012 and a promotional campaign was run for it in November 2012, the same month as the broadcast in question. Therefore Ofcom considered that Dannii Minogue’s endorsement of A2 milk in this broadcast was, in all likelihood, as a result of her commercial relationship with the A2 brand. Further, Ofcom noted that this commercial relationship was not mentioned throughout the discussion and therefore was not made clear to the viewer.

Ofcom was also concerned that Dannii Minogue’s comments included implicit claims that A2 milk would be beneficial for people who experience health issues after consuming regular milk. She described the effect that regular milk can have on some people (*“It might upset your tummy or lots of people get eczema or skin things from it”*) and then described A2 milk as a new alternative (*“It’s amazing”* and *“[I]t’s a new thing that’s come here. It only has one protein in it. It’s one protein that’s not GM-modified or anything. They’re just special cows.”*). Ofcom noted that if such claims had been made for A2 milk in television advertising, they would have required substantiation under the BCAP Code.

² See: <http://danniiinogue.tumblr.com/post/35265719427/lets-all-drink-milk>; and <http://www.farmersguardian.com/home/business/business-news/dannii-minogue-joins-milk-promotion-campaign/51343.article>.

We were also concerned that at the end of the discussion, the presenter, Lorraine Kelly, said: “*Well that’s great, it obviously works.*” We accepted ITV’s submission that this had not been intended to endorse the product, but had simply been a means of moving the conversation on. However, we noted that it did nevertheless inadvertently give the impression of supporting the claims Dannii Minogue had made about A2 milk.

Ofcom considered that although the discussion about A2 milk was brief and lasted around a minute, the information conveyed and overall effect was to promote and endorse A2 milk. The manner and language was promotional and Ofcom considered that the information included in the discussion went beyond what would be justified for editorial reasons, even taking into account Dannii Minogue’s own health issues with conventional milk. In addition we were concerned that while ITV had submitted that it had been agreed prior to broadcast that “a passing reference to Dannii’s commercial relationship with A2 could be made”, there was no indication given to viewers that Dannii Minogue was paid to promote A2 Milk. Ofcom therefore concluded that the references to A2 milk were promotional and unduly prominent in breach of Rules 9.4 and 9.5 of the Code.

Ofcom noted that these breaches appeared to be similar in nature to breaches of Rules 9.4 and 9.5 Ofcom recorded³ in Broadcast Bulletin 192 in respect of promotional and unduly prominent references made by a guest, Amanda Holden, to a group of law firms, on ITV1’s *This Morning*.

Ofcom therefore expects ITV to take further steps to ensure compliance in this area.

Breaches of Rules 9.4 and 9.5 of the Code

³ Broadcast Bulletin 192, 24 October 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>.

Advertising Scheduling Findings

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
S4C	10 November 2012, 16:00	COSTA Rule 4	S4C notified Ofcom that it exceeded the permitted advertising allowance on this date by 90 seconds Finding: Breach

Canfyddiadau Amserlennu Hysbysebion

Torri Rheol

Tabl canfyddiadau torri rheol

Adroddiadau cydymffurfio'r Cod ar Amserlennu Hysbysebion Teledu

Mae Rheol 4 y Cod ar Amserlennu Hysbysebion Teledu ("COSTA") yn datgan:

"... rhaid i'r amser sy'n cael ei neilltuo ar gyfer hysbysebion teledu a chyfnodau telesiopa ar unrhyw sianel beidio â bod yn fwy na 12 munud."

Sianel	Dyddiad ac amser darlledu	Cod a rheol / amod trwydded	Crynodeb o'r canfyddiad
S4C	10 Tachwedd 2012, 16:00	COSTA Rheol 4	Rhoddodd S4C wybod i Ofcom ei fod wedi mynd 90 eiliad dros y lwfans hysbysebu a ganiateir ar y dyddiad hwn. Canfyddiad: Wedi torri'r rheol

Other Programmes Not in Breach

Up to 14 January 2013

Programme	Broadcaster	Transmission Date	Categories
Discussion Show	Sikh Channel	04/11/2012	Religious/Beliefs discrimination/offence
Dispatches: Murdoch, Cameron and the £8 Billion Deal	Channel 4	11/06/2012	Due impartiality/bias
Emmerdale	ITV1	16/11/2012	Violence and dangerous behaviour
NAF's sponsorship of Greenwich: The Interviews	Horse & Country TV		Sponsorship credits
Raj Karega Khalsa	Sangat TV	18/10/2012	Crime
Sikh Channel Report	Sikh Channel	18/10/2012	Crime
Youth Show	Sangat TV	07/10/2012	Religious/Beliefs discrimination/offence
Zugos Microwave Panini's sponsorship of Friends	Comedy Central	29/10/2012	Violence and dangerous behaviour

Complaints Assessed, not Investigated

Between 1 and 14 January 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV1	n/a	Generally accepted standards	1
2012: A Funny Old Year	ITV1	31/12/2012	Generally accepted standards	1
50 Shocking Facts About Diet and Exercise	Channel 5	01/01/2013	Materially misleading	12
50 Shocking Facts About Diet and Exercise	Channel 5	01/01/2013	Violence and dangerous behaviour	1
8 Out of 10 Cats	Channel 4	31/12/2012	Generally accepted standards	2
A League of Their Own	Sky1	02/01/2013	Drugs, smoking, solvents or alcohol	1
A Touch of Frost	ITV3	02/01/2013	Charity appeals	1
Adventure Time	Cartoon Network	05/12/2012	Violence and dangerous behaviour	1
Advertisements	Sky News	01/01/2013	Advertising minutage	1
Advertisements	ITV1	06/01/2013	Advertising scheduling	1
Africa	BBC 1	09/01/2013	Animal welfare	1
Alan Carr: Chatty Man	Channel 4	25/12/2012	Offensive language	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2012	Drugs, smoking, solvents or alcohol	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2012	Due impartiality/bias	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2012	Generally accepted standards	12
Alan Carr's New Year Specstacular	Channel 4	31/12/2012	Offensive language	19
Alan Carr's New Year Specstacular	Channel 4	31/12/2012	Violence and dangerous behaviour	1
All You Can Eat	ITV1	08/01/2013	Generally accepted standards	2
Animal Antics	BBC 1	12/01/2013	Offensive language	1
Attenborough: 60 Years in the Wild	BBC 2	28/12/2012	Outside of remit / other	1
Battlecam	Showcase 2	14/01/2013	Outside of remit / other	1
BBC Breakfast	BBC 1	24/12/2012	Outside of remit / other	1
BBC iPlayer promotion	BBC News Channel	22/12/2012	Materially misleading	1
BBC News at Ten	BBC 1	03/01/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	09/01/2013	Generally accepted standards	1

BBC News at Ten	BBC 1	11/01/2013	Outside of remit / other	2
BBC Sports Personality of The Year (trailer)	BBC 1	n/a	Flashing images/risk to viewers who have PSE	1
Benidorm ER (trailer)	Channel 5	06/01/2013	Scheduling	1
Benidorm ER (trailer)	Channel 5	07/01/2013	Scheduling	1
Big Fat Quiz of the Year 2012	Channel 4	30/12/2012	Advertising/editorial distinction	1
Big Fat Quiz of the Year 2012	Channel 4	30/12/2012	Race discrimination/offence	1
Big Fat Quiz of the Year 2012	Channel 4	30/12/2012	Generally accepted standards	180
Blue Valentine	Film4	10/01/2013	Offensive language	1
Bombardier's sponsorship of Dave	Dave	n/a	Generally accepted standards	1
Breakfast	BBC 1	21/12/2012	Disability discrimination/offence	1
Breakfast	BBC 1	06/01/2013	Generally accepted standards	1
Breakfast	BBC 1	10/01/2013	Generally accepted standards	1
C2 Radio Cymru	Radio Cymru	09/11/2012	Drugs, smoking, solvents or alcohol	1
Capital Breakfast	Capital FM	19/12/2012	Offensive language	1
Capital Breakfast	Capital FM	n/a	Offensive language	1
Capital Drivetime with Twiggy and Emma	Capital FM	08/01/2013	Offensive language	1
Catch Me If You Can	BBC 2	31/12/2012	Offensive language	1
Celebrity Big Brother	Channel 5	03/01/2013	Generally accepted standards	2
Celebrity Big Brother	Channel 5	03/01/2013	Offensive language	1
Celebrity Big Brother	Channel 5	03/01/2013	Outside of remit / other	1
Celebrity Big Brother	Channel 5	05/01/2013	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	07/01/2013	Generally accepted standards	3
Celebrity Big Brother	Channel 5	07/01/2013	Outside of remit / other	1
Celebrity Big Brother	Channel 5	08/01/2013	Generally accepted standards	3
Celebrity Big Brother	Channel 5	08/01/2013	Outside of remit / other	2
Celebrity Big Brother	Channel 5	09/01/2013	Disability discrimination/offence	1
Celebrity Big Brother	Channel 5	09/01/2013	Generally accepted standards	2
Celebrity Big Brother	Channel 5	09/01/2013	Voting	2
Celebrity Big Brother	Channel 5	10/01/2013	Generally accepted standards	4
Celebrity Big Brother	Channel 5	11/01/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	13/01/2013	Outside of remit / other	1
Celebrity Big Brother's	Channel 5	07/01/2013	Generally accepted	1

Bit on the Side			standards	
Celebrity Big Brother's Bit on the Side	Channel 5	09/01/2013	Voting	1
Celebrity Big Brother's Bit on the Side	Channel 5	11/01/2013	Generally accepted standards	1
Channel 4 News	Channel 4	20/12/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	21/12/2012	Due impartiality/bias	1
Channel promotion	Viva	21/12/2012	Violence and dangerous behaviour	1
Come Dine With Me	4Seven	04/01/2013	Generally accepted standards	1
Coronation Street	ITV1	19/12/2012	Scheduling	5
Coronation Street	ITV1	24/12/2012	Generally accepted standards	1
Coronation Street	ITV1	31/12/2012	Materially misleading	1
Coronation Street	ITV1	02/01/2013	Generally accepted standards	1
Coronation Street	ITV1	04/01/2013	Materially misleading	1
Coronation Street	ITV1	07/01/2013	Generally accepted standards	4
Coronation Street Omnibus	ITV2	06/01/2013	Race discrimination/offence	1
CSI: Crime Scene Investigation	Sky Living	20/12/2012	Generally accepted standards	1
Dallas	Channel 5	01/01/2013	Violence and dangerous behaviour	1
Dancing on Ice	ITV1	06/01/2013	Generally accepted standards	1
Dancing on Ice	ITV1	06/01/2013	Voting	1
Dancing on Ice	ITV1/ITV1+1	06/01/2013	Voting	1
Dinner Date	ITV1	04/01/2013	Generally accepted standards	1
Dinner Date	ITV1	04/01/2013	Sexual orientation discrimination/offence	1
Dinner Date	ITV1	06/01/2013	Offensive language	1
Dispatches	Channel 4	07/01/2013	Crime	1
Don't Blame Facebook	Channel 4	08/01/2013	Generally accepted standards	1
Dreams' sponsorship of Winter programming on Sky	Sky Living	05/01/2013	Generally accepted standards	1
Drivetime	Talksport	04/01/2013	Generally accepted standards	1
East Midlands Today	BBC 1 East Midlands	30/11/2012	Generally accepted standards	1
EastEnders	BBC 1	20/12/2012	Offensive language	3
EastEnders	BBC 1	25/12/2012	Outside of remit / other	1
EastEnders	BBC 1	03/01/2013	Crime	1
EastEnders	BBC 1	n/a	Product placement	1
Eclectic Circus	Salford City Radio	29/11/2012	Drugs, smoking, solvents or alcohol	1
Eclectic Circus	Salford City Radio	14/12/2012	Sexual material	2

Emmerdale	ITV1	02/01/2013	Disability discrimination/offence	1
Emmerdale	ITV1	07/01/2013	Offensive language	1
Emmerdale / Coronation Street / Hollyoaks	ITV1 / Channel 4	31/12/2012	Offensive language	1
Fa Cup 3rd round	ITV1	05/01/2013	Generally accepted standards	1
FA Cup Football: Mansfield v Liverpool	ESPN	06/01/2013	Generally accepted standards	8
FA Cup Highlights	ITV1	06/01/2013	Generally accepted standards	2
Family Guy (trailer)	FX	n/a	Generally accepted standards	1
Fanny Hill	Yesterday	01/01/2013	Generally accepted standards	1
Fashion Police	E!	25/11/2012	Race discrimination/offence	1
Football Focus	BBC 1	22/12/2012	Generally accepted standards	1
Foxy Bingo's sponsorship of Dickinson's Real Deal	ITV1	11/01/2013	Generally accepted standards	1
Foxy Bingo's sponsorship of Dickinson's Real Deal	ITV2	04/01/2013	Scheduling	1
Foxy Bingo's sponsorship of Dickinson's Real Deal	ITV1	14/01/2013	Sexual material	1
Fracture	Film4	10/01/2013	Offensive language	1
Programming	BBC Radio 2	n/a	Outside of remit / other	1
Gordon's Christmas Cookalong Live (trailer)	Channel 4	25/12/2012	Generally accepted standards	1
Got to Dance	Sky1	07/01/2013	Under 18s in programmes	1
Great Night Out (trailer)	ITV1	22/12/2012	Scheduling	1
Great Night Out (trailer)	ITV1	05/01/2013	Scheduling	1
Greatest Christmas TV Moments	Channel 5	25/12/2012	Drugs, smoking, solvents or alcohol	1
Greg James	BBC Radio 1	22/11/2012	Sexual material	1
Halfords's sponsorship Credit	Dave	n/a	Age discrimination/offence	1
Have I Got News for You	BBC 1	27/12/2012	Gender discrimination/offence	1
Hollyoaks	Channel 4	07/01/2013	Scheduling	1
Hollyoaks	Channel 4	11/01/2013	Generally accepted standards	3
Home and Away	Channel 5	07/01/2013	Outside of remit / other	1
Hot Radio Public File	Hot Radio Bournemouth	n/a	Outside of remit / other	1
House Party	Channel 4	31/12/2012	Religious/Beliefs discrimination/offence	1
Ice Pilots (trailer)	Discovery Channel	17/12/2012	Generally accepted standards	1

Inglorious Basterds	Channel 4	05/01/2013	Race discrimination/offence	1
Inside Spearmint Rhino	Pick TV	09/12/2012	Sexual material	1
ITV News and Weather	ITV1	02/01/2013	Violence and dangerous behaviour	1
ITV News and Weather	ITV1	10/01/2013	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	11/01/2013	Outside of remit / other	1
ITV Nightscreen	ITV1	06/01/2013	Advertising scheduling	1
James Churchfield Breakfast Show	BBC Radio Cornwall 95.2 FM	11/01/2013	Outside of remit / other	1
John Bishop: The Sunshine Tour	BBC 1	01/01/2013	Offensive language	1
Joop sponsorship	FX	31/12/2012	Sexual material	1
Ken Livingstone and David Mellor	LBC 97.3 FM	22/12/2012	Offensive language	6
Kundli Aur Kismat/Future & Fortune	Sunrise TV	07/01/2013	Teleshopping	1
Kung Fu Panda Trailer	Nick Toons	02/01/2013	Offensive language	1
Lab Assistant	Salford City Radio	15/12/2012	Offensive language	1
Loch Ness	Channel 5	13/01/2013	Offensive language	1
Look Who's Talking	Gold	28/12/2012	Offensive language	1
Look Who's Talking	Gold	29/12/2012	Offensive language	1
Made in Chelsea	E4	24/12/2012	Violence and dangerous behaviour	1
Man v Food	Dave	n/a	Generally accepted standards	1
Meet the Hutterites (trailer)	National Geographic	18/12/2012	Animal welfare	1
Meet the Hutterites (trailer)	National Geographic	20/12/2012	Generally accepted standards	1
Meet the Hutterites (trailer)	National Geographic	20/12/2012	Generally accepted standards	1
Meet the Hutterites (trailer)	National Geographic	n/a	Animal welfare	1
Mermaids: The Body Found	Animal Planet	06/01/2013	Materially misleading	1
Midnight In Paris	Sky Movies Indie	03/01/2013	Outside of remit / other	1
Midsomer Murders	ITV1	06/01/2013	Scheduling	1
Millionaire Boy Racers	Channel 4	03/01/2013	Race discrimination/offence	1
Mr Selfridge	ITV1	06/01/2013	Advertising scheduling	1
Mrs. Brown's Boys	BBC 1	26/12/2012	Religious/Beliefs discrimination/offence	1
Mrs. Brown's Boys	BBC 1	29/12/2012	Religious/Beliefs discrimination/offence	1
New Year Live	BBC 1	31/12/2012	Outside of remit / other	1
News, Sport, Weather	Sky News	11/01/2013	Generally accepted	1

			standards	
Newsnight	BBC 2	08/01/2013	Generally accepted standards	5
NHL Ice Hockey	Premiere TV	25/12/2012	Outside of remit / other	1
Nick Ferrari	LBC 97.3 FM	10/01/2013	Due impartiality/bias	1
OJ Borg	Key 103	09/01/2013	Sexual material	1
Old Jews Telling Jokes	BBC 4	31/12/2012	Race discrimination/offence	1
Oxfam Advert	FX	03/01/2013	Advertising content	1
Parking Mad	BBC 1	08/01/2013	Outside of remit / other	1
Phones 4U's sponsorship of Films on 4	Channel 4	23/12/2012	Generally accepted standards	1
Phones 4U's sponsorship of Films on 4	Channel 4	24/12/2012	Scheduling	1
Phones 4U's sponsorship of Films on 4	Channel 4	25/12/2012	Generally accepted standards	1
Phones 4U's sponsorship of Films on 4	Channel 4	n/a	Generally accepted standards	1
Playboy TV Chat	Playboy TV Chat	04/01/2013	Sexual orientation discrimination/offence	1
Pocoyo	Nick Jr	03/12/2012	Harm	1
Premier League Football	Sky Sports 1	13/01/2013	Outside of remit / other	1
Press Preview	Sky News	08/01/2013	Due impartiality/bias	1
Press Preview	Sky News	09/01/2013	Disability discrimination/offence	1
Programming	BBC channels	n/a	Drugs, smoking, solvents or alcohol	1
Programming	Freeview channels	n/a	Outside of remit / other	1
Programming	unknown	06/01/2013	Generally accepted standards	1
Programming	Various	n/a	Gender discrimination/offence	1
Programming	Various	n/a	Generally accepted standards	1
Programming	Various	n/a	Outside of remit / other	2
QI XL	BBC 2	12/01/2013	Generally accepted standards	4
Restless	BBC 1	27/12/2012	Drugs, smoking, solvents or alcohol	1
Reversible Errors	Channel 5	02/01/2013	Offensive language	1
Reza, Spice Prince of India	Channel 5	07/01/2013	Animal welfare	1
Richard Bacon	BBC Radio 5 Live	10/01/2013	Outside of remit / other	1
Ricky Gervais: Science	E4	04/01/2013	Generally accepted standards	1
Ricky Hatton Fight	Prime Time	24/11/2012	Outside of remit / other	1

Ripper Street	BBC 1	30/12/2012	Violence and dangerous behaviour	12
River City	BBC 1 Scotland	28/12/2012	Religious/Beliefs discrimination/offence	1
Rude Tube	E4	01/01/2013	Violence and dangerous behaviour	1
Russell Howard's Good News	Dave	06/01/2012	Religious/Beliefs discrimination/offence	1
Saints and Scroungers	BBC 1	02/01/2013	Due impartiality/bias	1
Saints and Scroungers	BBC 1	04/01/2013	Outside of remit / other	1
Sangat TV	Sangat TV	29/11/2012	Religious/Beliefs discrimination/offence	1
Savdhaan India	Star Life OK	n/a	Violence and dangerous behaviour	1
Shelagh Fogarty	BBC Radio 5 Live	10/01/2013	Outside of remit / other	1
Sidewalks of New York	Sky Movies Indie	02/01/2013	Outside of remit / other	1
Sky Broadband's sponsorship of ITV1 Showcase Drama	ITV1	07/01/2013	Generally accepted standards	1
Sky News	Sky News	22/12/2012	Due impartiality/bias	1
Sky News	Sky News	23/12/2012	Scheduling	1
Sky Sports	Sky Sports	n/a	Competitions	1
Some Girls	BBC 3	24/11/2012	Outside of remit / other	1
Splash!	ITV1	05/01/2013	Violence and dangerous behaviour	2
Splash!	ITV1	05/01/2013	Voting	1
Stacey Dooley Investigates	BBC 3	07/01/2013	Generally accepted standards	1
Stand by Me	Channel 5	06/01/2013	Scheduling	3
Stargazing Live	BBC 2	10/01/2013	Outside of remit / other	1
Stephen King's Bag of Bones (trailer)	Channel 5	26/12/2012	Scheduling	1
Steptoe and Son	Gold	n/a	Outside of remit / other	1
Steptoe and Son	Gold	n/a	Outside of remit / other	1
Steve Doyle Punk Show	Salford City Radio	18/12/2012	Offensive language	1
Studio 66 Mornings	Studio 66 TV 1	28/12/2012	Sexual material	1
Subscription issue	Premier Sports	n/a	Outside of remit / other	1
Sun, Sex and Suspicious Parents	BBC 3	08/01/2013	Generally accepted standards	1
Sunday Hour	BBC Radio 2	13/01/2013	Scheduling	1
Sunrise	Sky News	22/12/2012	Due accuracy	1
Sunrise	Sky News	10/01/2013	Disability discrimination/offence	1
Sunrise	Sky News	12/01/2013	Outside of remit / other	1
Take Me Out	ITV1	05/01/2013	Race	7

			discrimination/offence	
Teletext	Channel 4	n/a	Outside of remit / other	1
Text Santa	ITV1	21/12/2012	Drugs, smoking, solvents or alcohol	1
Text Santa	ITV1	21/12/2012	Generally accepted standards	1
The 50 Funniest Moments of 2012	4Seven	05/01/2013	Offensive language	1
The 50 Funniest Moments of 2012	Channel 4	28/12/2012	Offensive language	2
The 50 Funniest Moments of 2012	Channel 4	28/12/2012	Violence and dangerous behaviour	35
The Big Bang Theory	E4	01/01/2013	Outside of remit / other	1
The Chase	ITV 1	n/a	Gender discrimination/offence	1
The Cube	ITV1	23/12/2012	Competitions	2
The Dam Busters	Channel 5	01/01/2013	Outside of remit / other	1
The Dam Busters	Channel 5	05/01/2013	Generally accepted standards	1
The Dam Busters	Channel 5	05/01/2013	Race discrimination/offence	1
The Graham Norton Show	BBC 1	31/12/2012	Undue prominence	1
The Graham Norton Show	BBC 1	11/01/2013	Generally accepted standards	2
The Jeremy Kyle Show	ITV1	10/01/2013	Outside of remit / other	1
The Jeremy Kyle Show	ITV1	n/a	Outside of remit / other	1
The Jonathan Ross Show	ITV1	22/12/2012	Violence and dangerous behaviour	2
The Last Leg of The Year (trailer)	Channel 4	30/12/2012	Disability discrimination/offence	1
The Love Machine	Sky Living	05/01/2013	Generally accepted standards	1
The New Normal (Trailer)	E4	28/12/2012	Sexual orientation discrimination/offence	1
The New Normal (Trailer)	E4	03/01/2013	Sexual orientation discrimination/offence	1
The New Normal (trailer)	E4	n/a	Generally accepted standards	1
The New Normal (trailer)	E4	n/a	Sexual orientation discrimination/offence	1
The One Show	BBC 1	21/12/2012	Religious/Beliefs discrimination/offence	1
The One Show	BBC 1	07/01/2013	Outside of remit / other	1
The Perfect Teacher	Channel 5	07/01/2013	Offensive language	1
The Polar Bear Family and Me	BBC 2	07/01/2013	Animal welfare	2
The Polar Bear Family and Me	BBC 2	08/01/2013	Animal welfare	1
The Review Show	BBC 2	04/01/2013	Generally accepted standards	1
The Royle Family	BBC 1	25/12/2012	Scheduling	1

The Sound of Music	BBC 1	31/12/2012	Outside of remit / other	1
The Wrong Show	Key 103	16/12/2012	Generally accepted standards	1
This Morning	ITV1	02/01/2013	Generally accepted standards	2
This Morning	ITV1	03/01/2013	Sexual material	1
This Morning	ITV1	03/01/2013	Violence and dangerous behaviour	1
This Morning	ITV1	04/01/2013	Transgender discrimination/offence	1
This Morning	ITV1	09/01/2013	Nudity	1
This Week	BBC 1	10/01/2013	Generally accepted standards	1
Tim Cocker Breakfast Show	XFM Manchester	18/01/2013	Generally accepted standards	1
Top Gear	BBC 3	24/12/2012	Race discrimination/offence	1
Top Gear Middle East Special	Dave	26/12/2012	Religious/Beliefs discrimination/offence	1
True Stories: Gypsy Blood	Channel 4	10/01/2013	Generally accepted standards	34
True Stories: Gypsy Blood	Channel 4	10/01/2013	Outside of remit / other	1
Ugly Betty	E4	05/01/2013	Scheduling	1
Up All Night (trailer)	ITV1	06/01/2013	Under 18s in programmes	1
Various programs	Sunrise TV (Sky 830)	07/01/2013	Teleshopping	1
Virgin Holidays' sponsorship of London Weekday Weather	ITV1	28/12/2012	Scheduling	1
Virgin Holidays' sponsorship of London Weekday Weather	ITV1	03/01/2013	Race discrimination/offence	1
Water Aid Advert	Channel 4	03/01/2013	Advertising content	1
Way To Go	BBC 3	n/a	Outside of remit / other	1
Will Best's Outrageous Vegas! Top 20	4Music	07/01/2013	Scheduling	1
World Without End	Channel 4	12/01/2013	Violence and dangerous behaviour	1
World's Craziest Fools	BBC 3	10/01/2013	Generally accepted standards	1
World's Strongest Man 2012	Channel 5	19/12/2012	Nudity	1

Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 10 and 23 January 2013.

Programme	Broadcaster	Transmission Date
Dances with Wolves	BBC 2	1 January 2013
EastEnders	BBC 1	25 December 2012
Emmerdale	ITV1	24 December 2012
Hollyoaks	Channel 4	4 January 2013
Live: Gurdwara Guru Hargobind Sahib Ji	Sangat TV	11 November 2012
MadBid	Controversial TV	n/a
Sponsorship credits	NTV	n/a
The David Burns Show	BBC Radio Humberside	18 October 2013
Weekend Out - Season Three	Sony Entertainment Television Asia	4 January 2013

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.