

## **Appendix**

### **Case 1 – Television Programme “Descendants of the Sun” (太陽的後裔) broadcast on the ViuTV Channel of HK Television Entertainment Company Limited (“HKTVE”) at 8:30 pm to 10:00 pm on 6, 7, 29 April, and 6, 12 and 13 May 2016**

Five members of the public complained against the captioned six episodes of the programme. The substance of the complaints was that the exposure of various commercial products/services/brands in the concerned episodes was not editorially justified or of an incidental nature, and amounted to indirect advertising.

#### **The Communications Authority (“CA”)’s Findings**

In line with the established practice, the CA considered the complaint case and the representations of HKTVE in detail. The CA took into account the relevant aspects of the case, including the following –

##### ***Details of the Case***

- (a) the concerned programme was an acquired Korean drama series about soldiers, doctors and their love stories;
- (b) the alleged products/service/brands were shown in various scenes in the episodes under complaint. While the relevant brand names and logos were discernible in some of the scenes, they were not clearly

discernible in some other scenes. There were no verbal references to the concerned brand names, and no positive remarks were made about them or their products/services. While the characters mentioned the features of certain products in their dialogues, such references were mostly generic in nature;

- (c) there were several location shooting scenes in the drama. In the episodes broadcast on 7 April, 6 May and 12 May 2016, the name and logo of a coffee shop were shown on the illuminated sign outside the shop in several wide shots with duration ranging from one second to 12 seconds. In the episode broadcast on 6 May 2016, there was a similar wide shot showing the logo and brand name of a sandwich restaurant on the advertising sign outside the shop which lasted for four seconds; and
- (d) HKTVE submitted, among others, that the concerned shots mentioned in paragraph (c) were editorially and contextually justified to convey the emotions, settings or relationship from a narrative, cinema editing and aesthetic points of view. In addition, HKTVE submitted that it did not receive commercial consideration in return for any of the alleged commercial references featured in the programme under complaint, and the codes of practice governing television programmes and advertising standards (the “Codes of Practice”) should be revised to make allowance for commercial references featured in acquired programmes from overseas.

***Relevant Provisions in the Generic Code of Practice on Television Programme Standards (“TV Programme Code”)***

- (a) paragraph 1 of Chapter 11 – indirect advertising which refers to the mingling of programme and advertising material or the embedding of advertising material within programme content, whether inadvertently or by design, is prohibited; and
- (b) paragraph 3 of Chapter 11 – no undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature so that the effect of such reference amounts to advertising. Such references must be limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature.

***Relevant Provision in the Generic Code of Practice on Television Advertising Standards***

- (a) paragraph 1 of Chapter 2 – advertisement or advertising material means any material included in a television programme service which is designed to advance the sale of any particular product or service or to promote the interests of any organization, commercial concern or individual; whether by means of words, sound effects (including music) and/or of visual presentation and whether in the form of direct announcements, slogans, descriptions or otherwise, as well as any promotional reference in the course of a programme to any products or services.

## **The CA's Considerations**

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

- (a) acquired programmes from overseas were subject to the same provisions governing indirect advertising as other locally produced programmes;
- (b) it was not a pre-requisite that the licensee must have received some form of consideration or benefit in return for the broadcast of the concerned contents for the relevant provisions governing indirect advertising to apply;
- (c) except for the shots mentioned in paragraph (c) of the CA's Findings above, many of the shots with the relevant brand names and logos discernible were justified by editorial requirements and were incidental in the context of the concerned scenes in the drama. In some other scenes, the brands and logos concerned were not clearly discernible. There was no mention in the dialogues of the brand names or the specific product names. Nor were there positive remarks about the concerned brands/products/services; and
- (d) as for the wide shots mentioned in paragraph (c) of the CA's Findings above, while the CA respects the creativity and editorial freedom of television productions, licensees must ensure that television programmes they broadcast comply with the applicable Codes of Practice. The CA considered that the exposure of the commercial names and logos on the advertising signs outside the concerned shops,

shown in prominent and full view and sometimes prolonged in the concerned wide shots, was not clearly justified by the editorial requirements of the programme. Nor was it of an incidental nature. The exposure of the concerned brands in the context of the concerned drama was unduly prominent and breached paragraph 3 of Chapter 11 of the TV Programme Code. These shots also had the effect of mingling programme and advertising material and embedding advertising material within programme content, which was in breach of paragraph 1 of Chapter 11 of the TV Programme Code.

## **Decision**

In view of the above, the CA considered that the complaints in respect of the episodes broadcast on 7 April, 6 May and 12 May 2016 regarding the exposure of the names and logos of the concerned coffee shop and sandwich restaurant were justified. Taking into consideration that the concerned drama was produced primarily for reception outside Hong Kong, HKTVE did not receive any monetary consideration for the exposure of the commercial references in the programme, and it was one of the first breaches of this nature by HKTVE, the CA decided that HKTVE should be **advised** to observe more closely paragraphs 1 and 3 of Chapter 11 of the TV Programme Code.

**Case 2 – Television Programme “Happy TVMost Birthday to Me” (萬千  
呃 Like 賀台慶) broadcast on the ViuTV Channel of HKTVE at 8:30 pm  
to 12:00 midnight on 11 May 2016**

Four members of the public complained that the exposure of the name and products of a home furnishing chain and a cosmetics brand in two segments of the programme gave undue prominence to the concerned brands and amounted to indirect advertising.

**The CA’s Findings**

In line with the established practice, the CA considered the complaint case and the representations of HKTVE in detail. The CA took into account the relevant aspects of the case, including the following –

***Details of the Case***

- (a) the concerned programme livecast a celebratory event of an online video platform. The concerned event comprised singing, dancing, games and skits, and the audience at the event venue was invited to give “likes” to their favourite performances via their mobile phones;
- (b) one of the concerned programme segments featured a mini-drama, during which the segment title, which incorporated the name of the concerned home furnishing chain, was projected onto the backdrop of the stage and could be seen intermittently. In an apartment setting, characters of a family inaccurately pronounced the concerned brand name a number of times when they said that some furniture at their home was bought at the concerned chain store, and that they wanted to

buy some of its smart and transformable furniture. Afterwards, a father character sang a song praising the service provided by the staff of the concerned chain and the features of its products, while satirising the small living space in Hong Kong. The concerned segment title was mentioned a few times near the end of the segment with the concerned brand name correctly pronounced;

- (c) in an award presentation segment, the host remarked that he would give the attending artistes a treat before presenting the awards. A few assistants brought out trays stacked with hair styling products of the concerned cosmetics brand and distributed the products to the artistes on stage. The host asked the artistes to smile when they “ate” the products and to hold them with the brand logo facing the camera and the audience. There were shots showing the artistes holding different products of the brand but the brand name on these products was hardly discernible. After that, the host asked a male artiste whether the product “tasted good” while the rest of the artistes were “eating” products of the concerned brand, the latter said “the hair jam smelled better than the rice with barbecued meat (四寶飯)”; and
- (d) HKTVE submitted that the broadcast of the programme was not sponsored by the two brands concerned and that HKTVE did not receive any payment for broadcasting the alleged commercial references in the concerned programme.

***Relevant Provisions in the TV Programme Code***

- (a) paragraph 1 of Chapter 11 – indirect advertising which refers to the mingling of programme and advertising material or the embedding of

advertising material within programme content, whether inadvertently or by design, is prohibited; and

- (b) paragraph 3 of Chapter 11 – no undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature so that the effect of such reference amounts to advertising. Such references must be limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature.

***Relevant Provision in the TV Advertising Code***

- (a) paragraph 1 of Chapter 2 – advertisement or advertising material means any material included in a television programme service which is designed to advance the sale of any particular product or service or to promote the interests of any organization, commercial concern or individual; whether by means of words, sound effects (including music) and/or of visual presentation and whether in the form of direct announcements, slogans, descriptions or otherwise, as well as any promotional reference in the course of a programme to any products or services.

**The CA's Considerations**

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

- (a) although the programme under complaint was a live broadcast of an acquired production, HKTVE, as a domestic free television programme



(“free TV”) service licensee, was obliged to make sure that all the programme content broadcast on its free TV service complied with the regulatory requirements as stipulated in the relevant ordinances, licence conditions and Codes of Practice;

- (b) it was not a pre-requisite that the licensee must have received some form of consideration or benefit in return for the broadcast of the concerned contents for the relevant provisions governing indirect advertising to apply;
- (c) the use of the furniture of the concerned home furnishing chain as props and the brief mention of some of its features were acceptable during the mini-drama in the concerned segment. However, the frequent verbal references to the name of the concerned chain and its furniture and the complimentary remarks made about its furniture in the mini-drama, as well as the prominent visual exposure of the segment title, which incorporated the concerned brand name, on the backdrop of the stage, gave undue prominence to the concerned brand. Such references, remarks and visual exposures were not clearly justified by the editorial requirements of the segment, nor were they of an incidental nature, and thus breached paragraph 3 of Chapter 11 of the TV Programme Code. These references, remarks and exposures also had the effect of mingling programme and advertising material and embedding advertising material within programme content, in breach of paragraph 1 of Chapter 11 of the TV Programme Code; and
- (d) during the concerned award presentation segment, the concerned cosmetics brand of hair styling products was barely identifiable. While the remarks about “eating” the inedible hair styling products and

the “taste” of the hair jam mentioned the concerned brand name, it was in a satirical and humorous manner and was not regarded as a serious attempt to advance the sale of the concerned product and did not constitute “advertising material”. The CA considered that the concerned exposures were justified by editorial requirements and were incidental, and that undue prominence was not given to the concerned brand.

## **Decision**

In view of the above, the CA considered that the complaints in respect of the exposure of the name of the concerned home furnishing chain were justified. Taking into account that HKTVE did not receive any monetary consideration for the exposure of the concerned brand name, and that this was one of the first breaches by HKTVE of this nature, the CA decided that HKTVE should be **advised** to observe more closely paragraphs 1 and 3 of Chapter 11 of the TV Programme Code.

**Case 3 – Television Programme “Night Talk · PK Battle” (晚吹-真 PK) broadcast on the ViuTV Channel of HKTVE at 11:30 pm to 12:00 midnight on 30 April, 7, 21 and 28 May, 18 and 25 June 2016 (*Episodes 4-7 and 10-11*), and at 11:45 pm to 12:15 am on 9, 16 and 23 July 2016 (*Episodes 13-15*)**

14 members of the public complained against the captioned nine episodes of the concerned programme. The main allegations were that the punishments inflicted on the programme hosts and/or guests in the programme were offensive, indecent, unnerving, disgusting, violent, sex-related, perverted, insulting, or of bad taste; disregarded the risk of spreading germs; affected the production staff (in particular female staff) working in the studio; amounted to torture, sexual harassment, reckless killing of harmless insects and wastage of food; exerted a bad influence on children and youth; and were unacceptable for broadcast on free TV service despite its classification as “M” (Mature) category.

Some complainants also complained that the programme contained crude or foul language, and shots of bare buttocks. In addition, the hosts’ crude figure sign and their private parts, though being masked by mosaic effects, could be identifiable.

### **The CA’s Findings**

In line with the established practice, the CA considered the complaint case and the representations of HKTVE in detail. The CA took into account the relevant aspects of the case, including the following –

***Details of the Case***

- (a) the concerned programme was a talk show featuring punishments inflicted on the two male programme hosts and/or the guests. All the nine concerned episodes were classified as “M” for indecent language, inappropriate behaviour, unnerving depiction (except for *Episodes 13 and 15*), adult contents and depictions of nudity (for *Episodes 13 and 15*). Aural and visual advice was given before the start of the concerned episodes. During the programme, the hosts and/or the guests were punished by each other or by a masked man;
- (b) warning caption indicating that the punishments contained unnerving scenes and dangerous acts and should not be imitated was superimposed at the top/bottom left corner of the screen during the portrayals of all the punishments in the programme;
- (c) the punishments inflicted on the hosts and/or guests included the consumption of food smeared on other people’s armpits or feet, the removal of a toe ring with one’s mouth from another person’s foot, the passing of food or fluid from one man to the other through their mouths, and the spitting of milk/mouthwash on one’s face or into one’s mouth. Other punishments involved sensitive or private body parts, which included the launching of speedy motor toy cars towards the crotches of the hosts, a guest throwing a basketball at a host’s crotch, and a masked man bursting a balloon inside a host’s boxer briefs. In *Episode 11*, the two male hosts and a male guest clipped the microphones to their nipples;

- (d) during certain punishments including the hosts running around naked in the recording studio, there were quick shots showing the butt cleavage of the hosts and/or the guest. No sensitive parts were visible as their private parts and bare buttocks were either covered by a baby sock or graphics on screen, or masked by mosaic effects;
- (e) during a punishment, the hands and feet of the two hosts were wrapped in plastic bags with some Dubia roaches inside. While being terrified at the beginning, they stomped their limbs on the floor to overcome the fear;
- (f) the programme contained unrefined expressions and expressions containing sexual connotations. Special sound effects were applied to cover some terms in the dialogues, and no foul expression was broadcast aurally or visually in the caption; and
- (g) HKTVE submitted that its general entertainment free TV service was positioned to satisfy the diverse viewing interests of local audiences and the concerned programme was a comical and fun-provoking talk show and a niche production with strong appeal to the young, fun-seeking and relaxed viewers; and that the programme contents were within the acceptable bounds for “M” programmes taking into consideration the late broadcast hours, provision of advisory slate, warning captions and classification at the start of the programme to inform viewers of the content nature.

***Relevant Provisions in the TV Programme Code***

- (a) paragraph 1 of Chapter 3 – programmes should be handled in a responsible manner and should avoid needlessly offending audiences; and
- (b) paragraph 2(a) of Chapter 3 – programmes should not include any material which is indecent, obscene, or of bad taste which is not ordinarily acceptable to the viewers taking into consideration the circumstances in which they are shown.

### **The CA's Considerations**

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

- (a) as a general rule, TV programmes should not include any material which is indecent or of bad taste which is not ordinarily acceptable to the viewers taking into account the circumstances in which they are shown. Any punishment that might cause grave bodily harm or carried strong sexual innuendos was unacceptable;
- (b) the punishments and contents mentioned in paragraph (c) of the CA's Findings above were indecent or of bad taste, which were not ordinarily acceptable to viewers under the circumstances in which they were shown (viz. in an "M" programme broadcast at late hours with the provision of aural and visual advice). HKTVE had not handled the above contents in a responsible manner and had not avoided needlessly offending audiences. The above contents were in breach of paragraphs 1 and 2(a) of Chapter 3 of the TV Programme Code;

- (c) in the relevant episodes of the programme, no genuine foul language was broadcast aurally or visually, and the shots showing the buttocks and butt cleavage of the hosts and/or guest were not in a sexual context. The language and the concerned shots, as well as the masked shots of the alleged figure sign, were within the acceptable bounds for material broadcast in a programme which was classified as “M”;
- (d) there were no close-up shots of the hosts’ action against the Dubia roaches in the relevant episode. There was insufficient evidence to show that the use of the roaches in the programme breached any provision of the TV Programme Code; and
- (e) the other allegations against the waste of food, the risk of spreading germs and the impact on the production staff working in the studio during certain punishments were outside the jurisdiction of the CA.

## **Decision**

In view of the above, the CA considered that the complaints in respect of the punishments and contents mentioned in paragraph (c) of the CA’s Findings above were justified. Regarding the sanction, the CA considered that the nature of the breach in the current case was essentially the same as that in respect of the first three episodes of the programme series for which sanction had been imposed on HKTVE. The CA also noted that the nine episodes under complaint in the current case had been broadcast before HKTVE was informed of the CA’s provisional findings in respect of the previous case. Having regard to this factual context and balancing all relevant factors, the

CA decided that **no further sanction** be imposed on HKTVE for the breach in the current case. HKTVE has been reminded of its responsibility as a licensee to ensure that any materials delivered on its licensed services should comply with the relevant Codes of Practice.