

Appendix

Case 1 – Television Programme “TVB 49th Anniversary Light Switching Ceremony” (跳躍飛騰TVB邁向50周年) broadcast on the Jade Channel of Television Broadcasts Limited (“TVB”) at 8:30pm to 9:30pm on 17 October 2016

A member of the public complained that in the fourth part of the programme, the frequent broadcast of highlights from programmes to be available on an over-the-top television programme service (the “OTT Service”) obtruded on viewing pleasure.

The Communications Authority (“CA”)’s Findings

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

Details of the Case

- (a) the programme under complaint was a one-hour live variety show featuring TVB’s anniversary light switching ceremony and introducing, among other things, new programmes to be broadcast on the domestic free television programme (“free TV”) service of TVB during the coming month of TVB’s anniversary;
- (b) at the start of the fourth part of the programme, there was a segment, which lasted for about two minutes, introducing several new

programmes provided by the OTT Service. In the lead-in, a programme host described the launch of the OTT Service as a big success and remarked that the number of subscribers to the OTT Service had reached one million in six months. The other hosts then remarked that the OTT Service had prepared a series of fabulous programmes to celebrate TVB's approaching its 50th anniversary, which included the latest variety and informative programmes, Japanese and Korean dramas etc. This was followed by a trailer showing highlights from a Mainland culinary reality show and six Japanese or Korean drama series which were or would be available on the subscription video-on-demand ("SVOD") service of the OTT Service. The highlight of each programme ended with a flipcard showing the name and availability of the programme on the SVOD service of the OTT Service. Similar remarks on the availability of the programmes were also mentioned in the voice-over;

- (c) the name of the OTT Service was mentioned four times in the concerned segment. Its logo was shown at the beginning and at the end of the trailer, with its name and some promotional references to its programmes mentioned at the same time;
- (d) the OTT Service provides a vast collection of video programmes and thematic channels which are not available on TVB's free TV service. It is operated by a separate company, TVB.COM Limited, which is a subsidiary of TVB; and
- (e) TVB denied any breach and submitted that the brief mention of the OTT Service was contextually justifiable in the concerned programme

which was TVB's anniversary celebration programme. It also argued that the OTT Service was an integral part of TVB's services, and references to the OTT Service should be considered as material for the promotion of TVB and/or its programme services under paragraph 2 of Chapter 2 of the Generic Code of Practice on Television Advertising Standards ("TV Advertising Code").

Relevant Provisions in the Generic Code of Practice on Television Programme Standards ("TV Programme Code")

- (a) paragraph 1 of Chapter 11 – indirect advertising in television programmes, 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;
- (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; and

Relevant Provisions in the TV Advertising Code

- (a) paragraph 2(c) of Chapter 2 – for the purpose of this Code, the term advertisement or advertising material does not include material for the promotion of the licensee's station and/or programme services.

The CA's Considerations

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

- (a) the programme under complaint, which mainly showcased and promoted some new programmes to be broadcast on TVB's free TV service in the month of TVB's anniversary, was in essence a programme parade for TVB's free TV service;
- (b) the OTT Service, which is operated by a separate company, TVB.COM Limited, is not licensed under the Broadcasting Ordinance ("BO") (Cap. 562). While the OTT Service broadcasts some programmes which have also been broadcast on TVB's free TV service, the majority of its programmes are not broadcast by TVB on its free TV service, and most of the programmes provided on the OTT Service are intended or available for access on payment of a subscription fee. Based on the above, the CA considers that the OTT Service and TVB's free TV service are distinct and separate services operated by different companies. Promotion of the OTT Service does not constitute promotion of TVB's station and programme services licensed under the BO and cannot be exempted from the definition of "advertisement" or "advertising material" under paragraph 2(c) of Chapter 2 of the TV Advertising Code;
- (c) based on the above analysis and the fact that the OTT Service was not identified as a sponsor of the programme, the concerned segment in relation to the OTT Service in the programme under complaint should be considered for compliance with the provisions governing indirect

advertising and undue prominence in the TV Programme Code;

- (d) the CA noted that the OTT Service was featured in a segment which lasted for about two minutes in the concerned one-hour programme parade. In the lead-in remarks and in the trailer introducing the OTT Service, positive remarks were made about the growth and achievements of the OTT Service in the past six months and about the introduction of several new programmes which were available or were to be made available on the SVOD service of the OTT Service. Such remarks were promotional in nature. The name of the OTT Service was mentioned four times. Its logo was shown at the beginning and at the end of the trailer, with its name and some promotional references to its programmes mentioned at the same time. Except for the lead-in remark that the OTT Service had prepared a series of fabulous programmes for celebrating TVB's approaching its 50th anniversary, there was no reference linking up the programmes shown on the OTT Service (but not on TVB's free TV service) and TVB's free TV service; and
- (e) the CA considered that the above references to the OTT Service (including its product/service, name and logo) gave undue prominence to the OTT Service so that the effect of such references amounted to advertising, and that such references could not be clearly justified by the editorial requirements of the programme parade for TVB's free TV service, and were not of an incidental nature, thereby breaching paragraph 3 of Chapter 11 of the TV Programme Code. The CA also considered that there was a mingling of programme and advertising material or the embedding of advertising material within programme

content, which was in breach of paragraph 1 of Chapter 11 of the TV Programme Code.

Decision

Having considered carefully the specific facts and circumstances of the case including the severity of the breach, and taking into account TVB's records of non-compliance with the relevant provisions governing indirect advertising, the CA decided that TVB should be **seriously warned** to observe more closely the relevant provisions of the TV Programme Code.

Case 2 – Television Programme “Programme Presentation 2017” (2017 TVB 節目巡禮星光晚宴) broadcast on the Jade Channel of TVB at 8:30pm to 9:30pm on 10 December 2016

Two members of the public complained that the programme promoted the OTT Service for over three minutes, but the OTT Service was not identified as a sponsor of the programme. It was also alleged that the frequent display of the logo of the OTT Service and references to its new functions clearly promoted the OTT Service 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 TVB in detail. The CA took into account the relevant aspects of the case, including the following –

Details of the Case

- (a) the programme under complaint was a one-hour showcase of TVB’s upcoming programmes, which generally showed trailers of programmes of different genres to be broadcast on various channels of TVB’s free TV service and highlights of TVB’s sales presentation event held on 14 November 2016;
- (b) after two short clips introducing the J2 and J5 Channels of TVB had been broadcast, two programme hosts, with the mascot of the OTT Service standing between them, remarked that the OTT Service was

popular among the audience and mentioned the number of channels and hours of programmes available on the OTT Service. They also mentioned that TVB's productions, as well as Japanese and Korean dramas, were available on the OTT Service;

- (c) after this introduction, the concerned programme broadcast a trailer of the OTT Service. The trailer started with a brief review of the OTT Service since its launch in April 2016, highlighting the number of its users, the coverage of the Rio Olympics in August 2016 and the merger with a live streaming and catch-up video service of TVB's five free TV channels into a feature of the OTT Service. The trailer then introduced a new channel named “戲曲台” (English translation: “Xiqu Channel”) and upcoming drama programmes and sports events which would be available on the OTT Service in 2017. New features of the OTT Service such as an interactive feature, roaming service and download function were also presented. The trailer concluded with a voice-over containing the remarks which subtly invited viewers to join the OTT Service. The duration of the entire segment, including the hosts' chit-chat and the trailer, was 4 minutes 20 seconds;
- (d) the name of the OTT Service was mentioned 15 times in the concerned segment and its logo was clearly shown seven times in the trailer. The OTT Service was not identified as a sponsor of the programme;
- (e) the OTT Service provides a vast collection of video programmes and thematic channels which are not available on TVB's free TV service. It is operated by a separate company, TVB.COM Limited, which is a subsidiary of TVB; and

- (f) TVB denied any breach and submitted that the brief mention of the OTT Service was contextually justifiable in the station's programme parade. It also argued that the OTT Service was an integral part of TVB's services, and that references to the OTT Service should be considered as material for the promotion of TVB and/or its programme services under paragraph 2 of Chapter 2 of the TV Advertising Code.

Relevant Provisions in the TV Programme Code

- (a) paragraph 1 of Chapter 11 – indirect advertising in television programmes 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;
- (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; and

Relevant Provision in the TV Advertising Code

- (a) paragraph 2(c) of Chapter 2 – for the purpose of this Code, the term advertisement or advertising material does not include material for the promotion of the licensee's station and/or programme services.

The CA's Considerations

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

- (a) the programme under complaint was a programme parade which was intended to showcase the upcoming programmes to be broadcast on TVB's free TV channels;
- (b) the OTT Service, which is operated by a separate company, TVB.COM Limited, is not licensed under the BO. While the OTT Service broadcasts some programmes which have also been broadcast on TVB's free TV service, the majority of its programmes are not broadcast by TVB on its free TV service, and most of the programmes provided on the OTT Service are intended or available for access on payment of a subscription fee. Based on the above, the CA considers that the OTT Service and TVB's free TV service are distinct and separate services operated by different companies. Promotion of the OTT Service does not constitute promotion of TVB's station and programme services licensed under the BO and cannot be exempted from the definition of "advertisement" or "advertising material" under paragraph 2(c) of Chapter 2 of the TV Advertising Code;
- (c) given that the OTT Service was not identified as a sponsor of the programme, the segment in relation to the OTT Service in the programme under complaint should be considered for compliance with the provisions governing indirect advertising and undue prominence in the TV Programme Code;

- (d) the CA noted that the OTT Service was featured in a segment which lasted for 4 minutes 20 seconds in a one-hour programme parade. The chit-chat between the two programme hosts and the trailer introducing the OTT Service made positive remarks about the growth and achievements of the OTT Service since its launch in April 2016, which were promotional in nature. The trailer introduced and described upcoming contents available on the OTT Service, including a thematic channel, various drama programmes (some of which would be premiered exclusively by the OTT Service), sports events, as well as new functions and features of the OTT Service, viz. an interactive feature providing recipes and travelling tips, international roaming service and download functions. The name of the OTT Service was mentioned 15 times in the segment and its logo could be clearly seen in the trailer seven times. The CA also noted that although there was no explicit solicitation, the ending remarks could be said to have subtly invited viewers to use the OTT Service; and
- (e) the CA considered that the above references to the OTT Service (including its product/service, name and logo) in the concerned programme gave undue prominence to the OTT Service so that the effect of such references amounted to advertising, and that such references could not be clearly justified by the editorial requirements of the programme parade for TVB's free TV service, and were not of an incidental nature, thereby breaching paragraph 3 of Chapter 11 of the TV Programme Code. The CA also considered that there was a mingling of programme and advertising material or the embedding of advertising material within programme content, which was in breach of

paragraph 1 of Chapter 11 of the TV Programme Code.

Decision

Having considered carefully the specific facts and circumstances of the case including the severity of the breach, and taking into account TVB's records of non-compliance with the relevant provisions governing indirect advertising, the CA decided that TVB should be **seriously warned** to observe more closely the relevant provisions of the TV Programme Code.

Case 3 – Television Programme “HK Boys In A British School” (嘩鬼上學去之農夫篇) broadcast on the Jade Channel of TVB at 10:30pm to 11:00pm on 22 September 2016

A member of the public complained against the captioned television programme. The allegation was that when the two hosts invited some British school boys to join them in the ritual of becoming brothers in Hong Kong style, they made certain remarks which resembled the oath to be taken by triad members.

The CA’s Findings

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

Details of the Case

- (a) the programme under complaint was a reality show hosted by a duo who went to Britain to experience the student life at a boarding school there. It was broadcast outside the family viewing hours (“FVH”) and was not classified into either “PG” or “M” category. In the programme, the two hosts felt that their friendship with the British students had been strengthened after a series of activities. One of the hosts then suggested that all of them swear on the barbeque fire in both English and Cantonese; and

- (b) according to expert advice, while the funny and comic ceremony did not amount to a triad ritual, the concerned words uttered in the ceremony were genuine triad expressions not generally accepted in or in the process of being absorbed into daily language.

Relevant Provisions in the TV Programme Code

- (a) paragraph 5 of Chapter 4 – expressions not so widely accepted, which may still be considered offensive by the average viewers, should not be used within the FVH. At other times they may be presented with discretion and in moderation. (*For standards on triad expressions, please see paragraph 5(b) of Chapter 3 General Programme Standards*); and
- (b) paragraph 5(b) of Chapter 3 – triad expressions not generally accepted in, or in the process of being absorbed into, daily language should be avoided.

The CA's Considerations

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

- (a) paragraph 5 of Chapter 4 of TV Programme Code establishes paragraph 5(b) of Chapter 3 of the same Code as the standard which applies to the use of triad expressions. Paragraph 5(b) of Chapter 3 is a stand-alone statement of the standard that applies to the use of triad expressions in any context in programmes. It is not limited to situations involving

depiction of triad groups and activities, as alleged by TVB;

- (b) TVB submitted the use of the same expressions in a stand-up comedy show as the only example to prove that the concerned expressions had been generally accepted in, or were in the process of being absorbed into, daily language. The CA considered that should the concerned expressions be generally accepted in, or be in the process of being absorbed into, daily language, TVB would have been able to quote abundant examples of how the concerned expressions were used in daily language, apart from the aforementioned performance; and
- (c) the CA was concerned about the use of genuine triad expressions in the programme and considered that the use of triad expressions not generally accepted, or in the process of being absorbed into, daily language should be avoided.

Decision

Having considered carefully the specific facts and circumstances of the case including the severity of the breach, the provisions of the TV Programme Code and the representations of TVB, the CA considered that TVB breached paragraph 5 of Chapter 4 and paragraph 5(b) of Chapter 3 of the TV Programme Code, and decided that TVB should be **advised** to observe more closely the relevant provisions of the TV Programme Code.