

## Appendix

### **Case 1 – Radio Advertisement for “Uber” (優步) broadcast on the CR 1 and CR 2 Channels of Hong Kong Commercial Broadcasting Company Limited (“CRHK”) in various time slots from May to September 2016**

Complaints were lodged by 11 members of the public against five versions of the captioned advertisement broadcast in various time slots during the period from May to September 2016. The main substance of the complaints included (a) that the concerned advertisement solicited people to become a driver to provide the advertised service and encouraged people to use such service, which was alleged to be illegal; (b) that the advertisement was misleading as it was illegal to drive a vehicle for the carriage of passengers for hire or reward without a hire car permit and third party risks insurance; and (c) that the station should not broadcast the advertisement given that all radio advertisements should be legal.

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

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

##### *Details of the Case*

- (a) in four of the five versions of the advertisement, a male character was encouraged to become a driver to provide the advertised service by

using a car of his own or of his family or rented from the advertiser to earn some extra income. There was no mention in any of the four versions that a hire car permit and third party risks insurance were required if a driver was to use his private car or the advertiser's car for the carriage of passengers for hire or reward; and

- (b) in the remaining version of the advertisement, a male character told another male character about his use of the advertised service and made complimentary remarks about the advertiser's car and service.

***Relevant Provision in the Radio Code of Practice on Advertising Standards ("Radio Advertising Code")***

- (a) paragraph 6 – the general principle which will govern all broadcast advertising is that it should be legal, decent, honest and truthful;
- (b) paragraph 9 – it is the responsibility of the licensee to ensure that in the preparation and broadcasting of all advertising matter:  
...
  - (c) great care should be exercised to prevent the presentation of false, misleading or deceptive advertising; and
- (c) paragraph 10 – for the acceptability of advertising matter:
  - (a) the licensee shall refuse the facilities of his station where he has good reason to doubt, among others, the truth of the advertising representations.

## **The CA's Considerations**

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

- (a) given the Government's proclamations on different occasions and the then on-going court cases involving seven drivers, who were arrested in August 2015 for providing the advertiser's service and were subsequently charged with a single count of "driving a motor vehicle for the carriage of passengers for hire or reward" and a single count of "using on a road a motor vehicle without third party risks insurance", contrary to the relevant provisions of the Road Traffic Ordinance (Cap. 374) and Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) respectively, it was clear that Cap. 374 and Cap. 272 required a driver who used a motor vehicle for the carriage of passengers for hire or reward to have a hire car permit and third party risks insurance (hereafter referred to as the "Relevant Statutory Requirements");
  
- (b) in the absence of any reference to the Relevant Statutory Requirements, four versions of the advertisement, as presented, may have misled listeners into an understanding that it was not necessary to obtain a hire car permit and/or third party risks insurance in order to lawfully provide the advertised service, and encouraged listeners to sign up as a driver to provide the advertised service. Similarly, the absence of information about the Relevant Statutory Requirements in the remaining version of the advertisement may have misled listeners, who were encouraged to use the advertised service, about the statutory requirements (including those regarding third party risks insurance). Hence there was a breach of paragraph 9(c) of the Radio Advertising Code;

- (c) the absence of the important information about the Relevant Statutory Requirements in the four versions of the advertisement which encouraged people to become a driver using a private car or the advertiser's car to provide the advertised service rendered the advertisement in breach of paragraph 6 of the Radio Advertising Code which required all broadcast material to be truthful; and
- (d) as pointed out in paragraph (a) above, at the time the advertisement was broadcast, there were good reasons (including the Government's proclamations and the on-going court cases) for the licensee to doubt the truth of the advertising representations, and to refuse to broadcast the advertisement as presented. There was hence a breach of paragraph 10(a) of the Radio Advertising Code.

## **Decision**

In view of the above, the CA considered that the complaints were justified. Taking into consideration the specific facts and circumstances of the case, including that the concerned case involved five versions of the advertisement broadcast during the period from May to September 2016, the CA decided that CRHK should be **warned** to observe more closely paragraphs 6, 9(c) and 10(a) of the Radio Advertising Code.

**Case 2 – Radio Advertisement for “Uber” (優步) broadcast on the Metro Finance Channel of Metro Broadcast Corporation Limited (“Metro”) at 5:21pm on 16 October 2016**

A member of the public complained against the captioned advertisement. The main allegation was that the advertisement contained a false representation on the legitimacy of the advertised service by claiming that drivers providing and passengers using the advertised service in Hong Kong would be covered by a global insurance policy taken out by the advertiser.

**The CA’s Findings**

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

*Details of the Case*

- (a) the advertisement promoted the use of the service of the advertiser, the waiving of the toll of the cross-harbour tunnel for passengers using the advertised service and claimed that the advertised service was covered by a global insurance policy for its passengers and drivers (the “Claim”).

*Relevant Provision in the Radio Advertising Code*

- (a) paragraph 9 – it is the responsibility of the licensee to ensure that in the

preparation and broadcasting of all advertising matter:

...

- (c) great care should be exercised to prevent the presentation of false, misleading or deceptive advertising;
  - (d) advertisers must be prepared to produce evidence to substantiate any claims; and
- (b) paragraph 10 – for the acceptability of advertising matter:
- (a) the licensee shall refuse the facilities of his station where he has good reason to doubt, among others, the truth of the advertising representations.

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

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

- (a) in the absence of any information about the Relevant Statutory Requirements, the concerned advertisement may have misled listeners, who were encouraged to use the advertised service, about the statutory requirements (including those regarding third party risks insurance), which was in breach of paragraph 9(c) of the Radio Advertising Code;
- (b) as analysed in Case 1, at the time the advertisement was broadcast, there were good reasons for the licensee to doubt the truth of the advertising representations and to refuse to broadcast the advertisement. There was hence a breach of paragraph 10(a) of the Radio Advertising Code; and

- (c) the licensee relied heavily on information from secondary sources (e.g. claims made by the advertiser) to substantiate the Claim. No relevant primary documentation was submitted to the CA to demonstrate that the licensee had duly examined whether the Claim was substantiated. Hence there was a breach of paragraph 9(d) of the Radio Advertising Code.

### **Decision**

In view of the above, the CA considered that the complaint was justified. Taking into consideration the specific facts and circumstances of the case, the CA decided that Metro should be **strongly advised** to observe more closely paragraphs 9(c), 9(d) and 10(a) of the Radio Advertising Code.

**Case 3 – Radio Programmes “The Summit” (光明頂) broadcast on the CR 1 Channel of CRHK at 11:00pm to 12:00midnight on 29 March 2017 and “On A Clear Day” (在晴朗的一天出發) broadcast on the CR 2 Channel of CRHK at 8:00am to 10:00am on 30 March 2017**

Three members of the public complained that the same programme host uttered triad expressions in either or both of the two captioned programmes.

**The CA’s Findings**

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

*Details of the Case*

- (a) the two programmes under complaint were identified as personal view programmes (“PVPs”). In both programmes, the concerned programme host commented on the difficulties faced by the then Chief Executive-elect (“CE-elect”). He considered that CE-elect had to show respect for her predecessor and major supporter, and made an analogy with the rules of *jianghu* (江湖). He then uttered remarks containing the alleged expressions in the two programmes in question; and
- (b) according to expert advice, the alleged expressions were genuine triad expressions not generally accepted in or in the process of being absorbed into daily language, although these expressions, as appeared



in the context of the programmes, did not amount to any triad ritual or issues relating to triad societies.

***Relevant Provision in the Radio Code of Practice on Programme Standards (“Radio Programme Code”)***

- (a) paragraph 15 – expressions considered unacceptable by an average person, among others, are to be avoided.

**The CA’s Considerations**

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

- (a) although the programme host appeared to have used the concerned expressions in the context of *jianghu* in Chinese wuxia novels, the alleged expressions were confirmed to be genuine triad expressions not generally accepted in, or in the process of being absorbed into, daily language. The CA was of the view that literature and sound broadcasting were fundamentally different in nature, and that the use of the concerned expressions in wuxia novels did not necessarily mean that they were not triad expressions or they were generally accepted in, or in the process of being absorbed into, daily language, so that they could be used casually in radio programmes; and
- (b) even though the two programmes under complaint, one of which was broadcast at late night and the other in the morning, did not target young listeners, the use of the triad expressions in question was neither necessary nor editorially justified in the concerned PVPs on current

affairs. The CA considered that genuine triad expressions not generally accepted in, or in the process of being absorbed into, daily language should be considered unacceptable by an average person and its use in radio programmes should be avoided.

### **Decision**

In view of the above, the CA considered that the complaints were justified. Taking into consideration the specific facts and circumstances of the case, the CA decided that CRHK should be **advised** to observe more closely paragraph 15 of the Radio Programme Code.