

**Case 1 – Television Programmes “Big Big Kids Awards 2017” (Big Big 小明星 2017), “Big Big Channel What’s In Store” (原來 Big Big Channel 咁好玩), “The Big Big Channel Nite” (群星拱照 Big Big Channel) and “Big Big Channel Mid-Autumn Hasty Party” (Big Big Channel 失驚無神賀中秋) broadcast on the Jade Channel of Television Broadcasts Limited (“TVB”) in June, July and October 2017 and “Scoop” (東張西望) broadcast on the Jade Channel of TVB on 22 and 23 June 2017 and rerun on the Jade Catch-Up Channel of PCCW Media Limited (“now TV”)**

The Communications Authority (“CA”) received 37 public complaints against the references to and/or exposure of the mobile app service “Big Big Channel” (“the Service”) in the five captioned television programmes. The main allegations were that the Service, which was not identified as a sponsor of the programmes concerned, was provided by Big Big Channel Limited (“BBCL”) and was not part of the domestic free television programme (“free TV”) service provided by TVB or the domestic pay television programme (“pay TV”) service provided by now TV. Hence, the introduction, exposure and promotion of the Service in the above five programmes amounted to mingling of programme and advertising materials and indirect advertising for the Service.

### **The CA’s Findings**

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

*Details of the Case*

- (a) the Service is provided by BBCL (formerly known as “TVB Network Vision Limited”), an indirectly owned subsidiary of TVB. BBCL is hence a corporate entity separate from TVB;
- (b) according to its website, the Service is an “all-in-one multimedia site combining the functions of a traditional TV, a mobile app and a social platform. It brings to the audience an experience through live streaming and video recording by TVB artists and online celebrities from China, Japan, Korea and Taiwan”. The Service was launched on a trial basis on 23 June 2017 and was officially launched on 23 July 2017;
- (c) as set out in TVB’s 2017 Interim Report, the Service is a new online social media platform which, among others, “is capable of delivering content marketing for advertisers by using content spun off from TVB’s programmes and interactive online games, which can be expanded into an e-commerce business”. Also, TVB targets “to achieve 3 million subscribers in a year’s time”, by leveraging its “dominant market share in terrestrial TV” and the fast-growing user base of its over-the-top platform;
- (d) the Service can be downloaded free of charge. After logging in, registered users can watch live streams of or videos recorded by TVB artistes and online celebrities. While watching live streams, users can send certain free virtual gifts, and a variety of paid gifts to artistes/key opinion leaders (“KOLs”) after purchasing token coins on the app.

Virtual gifts received by an artiste/KOL can be exchanged for cash;

- (e) some of the contents available on the Service are related to programmes which had been broadcast on TVB's free TV service, but there are other contents which are not directly related to TVB's programmes;
- (f) neither the Service nor BBCL was identified as the sponsor of any of the five programmes under complaint;
- (g) TVB submitted, among others, that the Service and TVB were entities which could not be separated from each other, that the Service was an extension of TVB's free TV service, and that the Service was neither a purchasable commercial product nor a commodity requiring payment of a fee; and
- (h) as regards now TV, it was involved in the broadcast of one of the programmes under complaint, viz. Scoop, on its Jade Catch-Up Channel which was a direct re-transmission channel which carried near-same-day re-run of programmes having been broadcast on the Jade Channel of TVB.

***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 or a person identified with the above 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 Generic Code of Practice on Television Advertising Standards (“TV Advertising Code”)***

- (c) paragraph 2(c) of Chapter 2 – for the purpose of the TV Advertising 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 Service was provided by BBCL, a corporate entity separate from TVB;
- (b) although some of the contents available on the Service were related to TVB’s free TV service, programmes and/or artistes, there were other contents which were tailor-made for the Service and were not directly related to TVB’s station and/or free TV service. The Service was not part of TVB’s free TV service and it was questionable whether the

Service was created primarily for promoting the programme services provided by TVB. While noting that the use of different platforms and means such as social media marketing through artistes or KOLs was common nowadays, the CA considered that advertising materials not related to the licensee's station and/or programme services should be clearly distinguished from programmes;

- (c) in determining whether the individual programmes under complaint were in breach of the relevant provisions, the CA had carefully considered whether the references to and/or exposure of the Service in each of the programmes constituted "advertising material" within the meaning of the TV Advertising Code and if so, whether the references to and/or exposure of the Service in the individual programmes under complaint were "for the promotion of" TVB's "station" and/or "programme services", and hence could be excluded from the definition of "advertisement or advertising material" pursuant to paragraph 2(c) of Chapter 2 of the TV Advertising Code. The CA's assessments of each of the five programmes under complaint are set out at [Attachment](#);
- (d) TVB submitted that the public had free access to the Service and that, to viewers, it was a free TV channel operated online by TVB. However, the CA considered that the applicability of paragraph 2(c) of Chapter 2 of the TV Advertising Code did not depend on whether the services being promoted were free of charge or not. Also, TVB's assertion about the public perception, if any, that the Service was a free TV channel operated by TVB was irrelevant. Even if there was such a public perception, it did not mean that the Service formed part of TVB's station and/or free TV service, or that references to it in TVB's

programmes were for the promotion of TVB’s “station” and/or “programme services”; and

- (e) as regards now TV, the fact that the channel in question (i.e. Jade Catch-Up Channel) was a direct re-transmission channel carrying programmes that had been broadcast on a free TV service did not obviate the responsibility for now TV, as a pay TV licensee, to comply with the applicable provisions in the Codes of Practice. The CA considered that the Jade Catch-Up Channel could not be regarded as a channel produced primarily for reception outside Hong Kong. Hence, the exemption provided under paragraph 2 of Chapter 8 of the TV Advertising Code<sup>1</sup> was not applicable in this case.

## **Decision**

Having considered carefully the specific facts and circumstances of the complaints (including the assessments as set out at [Attachment](#)), the CA considered that except for the 4.5-minute segment involving the cast members of the TVB drama “Legal Mavericks” in the episode of “Scoop” broadcast on 23 June 2017, the complaints concerning undue prominence of and indirect advertising for the Service in the five programmes under complaint were justified and paragraphs 1 and 3 of Chapter 11 of the TV Programme Code were breached.

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<sup>1</sup> Paragraph 2 of Chapter 8 of the TV Advertising Code stipulates that advertisements (including sponsorship and product placement) built into programmes of channels acquired for direct re-transmission which are produced primarily for reception outside Hong Kong but which do not contribute to any advertising revenue of the licensee may deviate from the standards set out in paragraph 1 of the same Chapter where the licensee can demonstrate that compliance is not feasible without interrupting the licensee’s TV programme services.

Regarding the sanction against TVB, the CA noted that the broadcast dates of the first four programmes under complaint (viz. “Big Big Kids Awards 2017”, the two episodes of “Scoop”, “Big Big Channel What’s In Store” and “The Big Big Channel Nite”) were in close proximity to each other. Taking into account the circumstances mentioned above and having balanced all relevant considerations (including the licensee’s records of non-compliance with provisions on indirect advertising and the severity of the breaches), the CA decided that a **financial penalty of \$300,000** should be imposed on TVB for breaching the relevant provisions in the TV Programme Code in the broadcast of the four programmes “Big Big Kids Awards 2017”, the two episodes of “Scoop”, “Big Big Channel What’s In Store” and “The Big Big Channel Nite” collectively.

As for the fifth programme “Big Big Channel Mid-Autumn Hasty Party”, which was broadcast a few months later in October 2017, the CA considered that a separate sanction should be imposed. Having balanced all relevant considerations (including the licensee’s records of non-compliance and the fact that the breaches involved were not the most serious among the five programmes under complaint), the CA decided that TVB should be **seriously warned** to observe more closely the relevant provisions in the TV Programme Code.

Regarding the sanction against now TV, having considered carefully the specific facts and circumstances of the case and the relevant factors (including that the licensee had no record of breaching the provisions on indirect advertising for programmes broadcast on its direct re-transmission channel), the CA decided that now TV should be **advised** to observe more closely the relevant provisions.

**Attachment**

**(1) “Big Big Kids Awards 2017” (Big Big小明星2017) broadcast on TVB Jade on 18 June 2017 at 8:00pm to 9:30pm**

The programme was a 1.5-hour variety show in which kids, who were referred to as KOLs of TVB’s Internet platform, competed for six awards. Throughout the programme, there was prominent exposure of the logo and/or name of the Service in the theme music, studio setting, the costumes of the mascots, the performances of dancers and artistes, the presentation of trophies and props, and the superimposition of the logo of the Service on the screen. Although verbal reference to the full name of the Service was limited to the voice-over in the theme music, the programme hosts made repeated verbal references to “Big Big小明星” (a total of 14 times).

The CA considered that the frequent and prominent exposure of the logo and/or name of the Service and references to the tagline (viz. Big Big) could lead to an inference that they were designed to promote the Service and should be considered as “advertising material”. Such exposures/references were not related to TVB’s free TV service. Nor could they be properly classifiable as “material for the promotion of TVB’s station and/or programme services”.



- (2) “Scoop” (東張西望) broadcast on TVB Jade on 22 and 23 June 2017 at 7:30pm to 8:00pm; and then on now TV Jade Catch-Up Channel<sup>2</sup> on 22 and 23 June 2017 at 11:30pm (which was rerun on the following day at various time slots)**

The programme was an infotainment programme on social issues and showbiz gossip produced by and broadcast on the Jade Channel of TVB. The CA noted that there was a four-minute segment in the episode broadcast on 22 June 2017 providing step-by-step instructions and demonstrations to guide viewers to search for and download the Service, as well as introduction of different contents and functions available on the Service. It also contained the remarks of a male artiste urging viewers to download the Service for following him on the app. There were verbal and visual references to the Service throughout the segment, which were prominent and were not of an incidental nature, the purpose of which did not seem to be the promotion of TVB’s station and/or its free TV service. The CA considered that the segment was designed to promote the Service, which would be soft launched on the following day and should be treated as “advertising material”.

In the episode broadcast on 23 June 2017 (i.e. the day on which the Service was available for free download worldwide), there was a one-minute segment, which was, on the face of it, solely for the promotion of the Service. It displayed the names of different zones available on the Service, which would be difficult to classify as “material for the promotion of TVB’s station and/or programme services”. The frequent references to the Service within the segment concerned were not of an incidental nature.

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<sup>2</sup> The Jade Catch-Up Channel of now TV was a direct re-transmission channel provided by TVB which carried near-same-day re-run of programmes having been broadcast on the Jade Channel of TVB.

On the other hand, the same episode contained a segment of about four minutes 30 seconds covering the on-site report about the launching ceremony of the Service attended by the cast members of the TVB television drama “Legal Mavericks” (踩過界) (the “Drama”), which was presented in the form of entertainment news about the event. Apart from visual and verbal references to the name and/or logo of the Service, there were interviews with artistes about the behind-the-scene stories of the Drama and their plan to watch the first episode of the Drama broadcast on the following day. The CA considered that it was reasonably arguable that this segment was directly relevant to TVB’s free TV service and was contextually justified having regard to the nature of the infotainment programme concerned. As such, the CA considered that this part of the complaint was unsubstantiated.

**(3) “Big Big Channel What’s In Store” (原來Big Big Channel咁好玩) broadcast on the Jade Channel of TVB on 9 days between 26 June and 14 July 2017 at 10:31pm, 10:32pm or 10:55pm**

The programme was a nine-episode mini drama series with each episode lasting for one minute. Adopting the format of a skit, each episode presented a different story portraying various characters who dealt with everyday life situations such as cooking and putting on make-up.

The CA noted that the first episode of the series provided information on how to access the Service and its main features, and that the remaining eight episodes introduced the contents available in various zones therein. While some references to the Service might be considered as relevant to TVB’s free TV service, the CA considered that many of them were examples of the

contents available on the Service, which were for the promotion of the Service rather than TVB's free TV service.

The CA also noted that repeated verbal and/or visual references to the name, logo, mascot of and/or contents available on the Service were found throughout each episode of the series. Other distinctive exposures of the name/logo of the Service in the series included the display of the programme title with the Service's name incorporated at the opening of each episode; the insertion of a voice-over mentioning the name of the Service once before and after the skit; the standalone display of the Service's logo which occupied a part of/the whole television screen and the logo shown in the app icon on the image of a mobile phone screen at times; and the Service's name and logo being shown in the middle of the screen conspicuously in the end frame. In addition, at the end of every episode, there was the appearance of the mascot bearing the name and logo of the Service, and a closing message soliciting viewers to download the Service. The CA considered that undue prominence had been given to references to the Service and these were not of an incidental nature.

**(4) “The Big Big Channel Nite” (群星拱照Big Big Channel) broadcast on the Jade Channel of TVB on 23 July 2017 from 8:30pm to 10:30pm**

The programme was a two-hour live variety show introducing the contents available on the Service. It was broadcast on 23 July 2017, when the Service was officially launched. The CA noted that the programme contained frequent references to the name of the Service (about 100 times) and its contents, and the logo of the Service as well as its mascot were repeatedly

shown. It also featured different kinds of materials of a promotional nature including solicitation for downloading or using the Service; introduction of the upcoming events to be held on the Service; and demonstration of the features of the Service. There was no clear linkage between most of the references to and/or exposure of the Service within the programme and TVB's free TV service. The CA considered that the whole programme was designed specifically to promote the Service, which was officially launched on the broadcast day of the programme.

**(5) “Big Big Channel Mid-Autumn Hasty Party” (Big Big Channel失驚無神賀中秋) broadcast on the Jade Channel of TVB on 3 October 2017 from 10:30pm to 11:00pm**

The programme was a half-hour live variety show themed on a crossover celebration of Mid-Autumn Festival with the Service. The CA noted that throughout the programme, there were a number of references to the upcoming events to be broadcast exclusively on the Service but not on TVB's free TV service (e.g. the final of celebrity mah-jong contest, “Big Big Voice” and “Beautiful Cooking”). Also, other contents of the Service featured in the programme were said to be available exclusively on the Service. In addition, the programme featured a prize presentation to artistes who had outstanding performances in relation to the Service, and viewers were invited to join the live streams on the Service later in the night. The CA considered that the references to the Service within the programme could hardly be considered as “material for the promotion of TVB's station and/or programme services”. Instead, the programme was designed to promote the Service and therefore should be considered as “advertising material”.

**Case 2 – Television Programme Promos for “TVB 50<sup>th</sup> Anniversary Gala” (《萬千星輝賀台慶》節目宣傳片) and “TV Awards Presentation 2017” (《萬千星輝頒獎典禮 2017》節目宣傳片) broadcast on the Jade Channel of TVB on 19 November 2017 at 7:05pm and 21 January 2018 at 7:00pm respectively**

The CA received a public complaint against each of the captioned programme promos. The main allegation was that the exposure of the names and/or logos of various commercial brands in the promos amounted to indirect advertising for the brands concerned.

### **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) TVB classified the broadcast materials under complaint as programme promos which are not counted as advertisements or advertising materials;

#### Promo for “TVB 50<sup>th</sup> Anniversary Gala” (the “Gala”) broadcast on 19 November 2017

- (b) the 30-second promo featured a food fair in the studio, which was said to be providing catering for the artistes before the Gala to be broadcast on the same channel later in that evening. Two hosts stood in front of

and walked through some of the stalls. They also talked to various dressed-up artistes along the way. When some of the artistes were seen eating or brandishing certain food products in front of the camera, the hosts made positive remarks on the relevant products. The names and/or logos of some commercial brands on the signboard placed at the top of individual stalls were discernible in the long shot showing two hosts standing still or walking through the walkway. Towards the end of the promo, the hosts reminded viewers that the Gala would start at 8:30pm that evening;

Promo for “TV Awards Presentation 2017” (the “Ceremony”) broadcast on 21 January 2018

- (c) in the 30-second promo for the Ceremony broadcast on the same channel later in that evening, two hosts visited some stalls set up for a carnival held before the Ceremony. The hosts remarked at the beginning of the promo that the Ceremony was about to start and its preparation was in full swing. They then went from one stall to another to introduce what was offered at each stall and made positive remarks on the products. The brand names and/or logos of several companies were clearly discernible in the moving shot. Some of the artistes were seen trying out the products/food at the stalls, while some others were seen brandishing certain products to the camera. No brand name was mentioned in the promo but some positive remarks on the products/food were made by the hosts when they stood in front of the relevant stalls. At the end of the promo, the hosts reminded viewers to stay tuned to the Ceremony which would commence at 8:30pm;

- (d) none of the commercial brands concerned was identified as the sponsor of the broadcast materials under complaint, or of the Gala or the Ceremony; and
- (e) TVB submitted, among others, that the broadcast materials under complaint were one-off live promos inviting viewers to watch the upcoming live telecast of the Gala and the Ceremony, and that the exposure of commercial names and/or logos was brief, unclear and natural in context while the relevant verbal remarks were generic and unspecific.

***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 or a person identified with the above 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***

- (c) 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) in ascertaining whether the broadcast materials under complaint were programme promos *per se*, the assessment should be made on the basis of the substance rather than the form;

Promo for the “Gala”

- (b) although the exposure given to the brand names concerned in the promo was not prolonged and the shots were fleeting in general, some of the brands were discernible. In addition, some artistes were seen brandishing certain products in front of the camera, including one female artiste holding up two packs of beauty drinks in a comparatively closer shot near the end of the promo. Although no commercial brands were mentioned verbally, the host made favourable remarks to the relevant food/products. The CA considered that given the overall presentation, including the choice of shots, brandishing of products and favourable remarks as mentioned above, undue prominence was given to the commercial brands concerned, the effect of which amounted to indirect advertising;



Promo for the “Ceremony”

- (c) except for the beginning and the end of the promo which reminded viewers of and invited them to watch the Ceremony, a significant part of the promo appeared to be showcasing various kinds of service/food which were offered in the carnival held before the Ceremony, and that the relevant commercial brands were discernible when the hosts were shown walking from one stall to another. There were also verbal references to the generic name of the products concerned which was not of an incidental nature. Having regard to its focus and presentation, the promo could not be said to be a prelude to kick off the live cast of the Ceremony; and
  
- (d) on TVB’s assertion that the exposure of commercial names and/or logos in the programme promos was brief, unclear and natural in context, the CA underlined that, instead of singling out a few shots for consideration in its assessment, it had taken into account the overall presentation of the programme promos, including the choice of shots, favourable remarks/verbal references made to the products/services concerned, etc., before coming to a view that undue prominence was given to the commercial brands concerned, the effect of which amounted to advertising.

**Decision**

Having considered carefully the specific facts and circumstances of the case, the CA considered that the complaints were justified and that paragraphs 1 and 3 of Chapter 11 of the TV Programme Code were breached. While noting that TVB has no record of breaching the provisions on indirect advertising in

programme promo, the CA considered that, in determining the appropriate sanction, the assessment should be made on the substance rather than the form of the broadcasting materials. Taking into consideration all relevant factors (including the licensee's record of non-compliance with the provisions on indirect advertising and the severity of the breach under concern), the CA decided that TVB should be **strongly advised** to observe more closely the relevant provisions of the TV Programme Code.