

Appendix

Case – Television Programme “Hong Kong Our Home Concert” (香港唱好演唱會) broadcast from 8:00pm to 11:00pm on 14 September 2019 on the Jade Channel of Television Broadcasts Limited (TVB)

The Communications Authority (CA) received 16 public complaints about the captioned television programme. The major allegations were –

- (a) the detailed introduction of special offers of restaurants, hotels, shops, products/services, etc. (the “Special Offers”) within the programme amounted to advertising materials and direct encouragement of purchase of the products/services concerned; and
- (b) the excessive exposure or highlight of and/or repeated positive remarks of a brand of herbal jelly (the “Herbal Jelly”), a bakery (the “Bakery”) and an online shopping platform (the “Platform”), which were identified as the product sponsors of the programme (collectively, “the Three Product Sponsors”), were unnatural and obtrusive having regard to the programme context and genre, and amounted to direct encouragement of purchase of the products or use of the service 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) the 3-hour programme under complaint was an entertainment and variety show, comprising artistes performing songs and participating in games, artistes' chitchats with programme hosts and introduction of the Special Offers, etc. The aural and visual announcement "The following programme contains indirect advertising" was broadcast before the start of the programme. The Bakery, the Herbal Jelly and the Platform were identified as product sponsors of the programme in the end rolling credits;
- (b) the programme started with the voice-over that Hong Kong was experiencing hardships and business downturn. It was followed by interviews with people from the union/association of different professions on the difficulties encountered by these professions;
- (c) the hosts and artistes introduced the Special Offers in the studio and/or on locations. There were verbal references to information on the Special Offers, including the names of the providers and discount details;
- (d) in front of a backdrop bearing the name/logo, etc. of the Platform, the hosts introduced the promotional packages and offers of the Platform. There were verbal references to and exposures of the Platform and the products available on the Platform;
- (e) the hosts interviewed some artistes at the respective booths of the Herbal Jelly and the Bakery in the studio. In a segment filmed at a

retail shop of the Bakery, the host tried different products and interviewed the customers, while the voice-over introduced the promotions. In another segment filmed at a shop of the Herbal Jelly, the host interviewed customers consuming a product and the voice-over introduced another product. There were exposures of the names/logos of the Herbal Jelly and the Bakery but no verbal references to the names; and

- (f) TVB submitted, among others, that apart from the Three Product Sponsors, TVB did not receive any payment or valuable consideration from any other advertisers or sponsors for the broadcast of the programme; and that the commercial references in the programme were merely consumer information to match the theme of the programme, viz. to boost local consumption. The consumer information did not aim to advance the sale of any particular product/service and should not be regarded as advertisements or advertising materials.

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

- (a) following the CA's decision to relax the regulation of indirect advertising in television programme services in July 2018, the revised provisions governing indirect advertising and product sponsorship in the TV Programme Code and the TV Advertising Code respectively took effect on 27 July 2018 (the "relaxed regulatory regime"). The relevant provisions under the relaxed regulatory regime are as follows;

Relevant Provisions in the TV Programme Code

- (b) paragraph 1 of Chapter 11 – indirect advertising may or may not involve a payment or transfer of valuable consideration to a licensee. Advertising material should be clearly identifiable as such so that viewers can make their own assessment and attach appropriate weight to it;
- (c) paragraph 1A of Chapter 11 – with the exception of news programmes, current affairs programmes, children’s programmes, educational programmes, religious service and other devotional programmes, indirect advertising in programmes is permitted;

Relevant Provisions in the TV Advertising Code

- (d) 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/service or to promote the interests of any organisation, commercial concern or individual;
- (e) paragraph 4 of Chapter 3 – advertising material should be clearly identifiable as such so that viewers can make their own assessment and attach appropriate weight to it; and
- (f) paragraph 2A(a) to (c) of Chapter 9 – a licensee may include one or more product(s) or service(s) within a programme in return for payment

or other valuable consideration provided that (a) their exposure or use is presented in a natural and unobtrusive manner having regard to the programme context and genre, and there is no direct encouragement of purchase or use of product(s) or service(s); (b) the sponsor for the product/service featured must be clearly identified in the front and/or end sponsor credits of the programme; (c) and an announcement containing the wording “The following programme contains indirect advertising” is made to clearly inform viewers of the inclusion of product/service sponsorship in the programme before the programme starts.

(g) in gist, under the relaxed regulatory regime, indirect advertising (which may or may not involve a payment or transfer of valuable consideration to a licensee) is permitted in television programmes except for certain specified programmes¹. Indirect advertising where licensees receive payment or other valuable consideration for exposure of products/services within a programme (i.e. “product/service sponsorship”, or commonly “product placement”) is allowed subject to the compliance with some general requirements, including, among others, that the licensee is required to –

(i) clearly inform the viewers of the inclusion of product sponsorship before a programme starts and to clearly identify the sponsor(s) in the front and/or end sponsor credits of the programme (the “Identification Requirement”);

¹ Viz. news programmes, current affairs programmes, children’s programmes, educational programmes, religious service and other devotional programmes

- (ii) ensure the exposure of the product(s) or service(s) is presented in a natural and unobtrusive manner having regard to the programme context and genre (the “Natural and Unobtrusive Manner Requirement”); and
- (iii) ensure there is no direct encouragement of purchase or use of the product(s) or service(s) (the “No Direct Encouragement Requirement”).

The CA’s Consideration

The CA, having regard to the relevant facts of the case including the information submitted by TVB, considered that –

Indirect Advertising of the Special Offers

- (a) although TVB submitted that it did not receive any payment or other valuable consideration from any advertisers or sponsors for the presentation of the Special Offers, such materials were obviously designed to promote the products/services concerned and had the direct effect of advancing sales, and hence were advertisements or advertising materials. Nevertheless, indirect advertising within an entertainment and variety show is allowed under the relaxed regulatory regime, and the advertising materials for the Special Offers were presented in a manner which made them clearly identifiable to viewers. In this regard, TVB complied with the TV Programme Code and the TV Advertising Code;

Indirect Advertising of the Three Product Sponsors

Compliance with the Identification Requirement

- (b) TVB complied with the Identification Requirement by broadcasting the required announcement before the start of the programme, and identification in the end rolling credits;

Compliance with the Natural and Unobtrusive Manner Requirement and the No Direct Encouragement Requirement

- (c) for the indirect advertising of the Herbal Jelly, there was no verbal reference to the brand name in the programme. The favourable remarks in the programme about products of the Herbal Jelly were general comments rather than advertising claims. There was no lingering or frequent close-up shot of the brand name/logo/products, and no reference to sales information of the products. The presentation was considered natural and unobtrusive having regard to the programme context and genre. Also, there was no advertising claim/promotional slogan/strong persuasion for viewers to purchase the products. Hence, the indirect advertising of the Herbal Jelly by TVB complied with both the Natural and Unobtrusive Manner Requirement and the No Direct Encouragement Requirement;
- (d) for the indirect advertising of the Bakery, there was no verbal reference to the brand name in the programme. The favourable remarks in the programme about the products of the Bakery were general comments rather than advertising claims. There was no lingering or frequent

close-up shot of the brand name/logo/products. Although there were verbal references and captions on discount details of two products of the Bakery, the references were overall brief and the introduction of the products was not excessively detailed, which could be considered natural and unobtrusive having regard to the programme context and genre. Also, there was no advertising claim/promotional slogan/strong persuasion for viewers to purchase the products. Hence, the indirect advertising of the Bakery by TVB complied with the Natural and Unobtrusive Manner Requirement and the No Direct Encouragement Requirement; and

- (e) for the indirect advertising of the Platform, overall speaking there was no lingering or frequent close-up shot of the name/logo, etc. of the Platform in the programme. The introduction of the promotional packages and offers of the Platform could be considered relevant to the programme context and genre. However, although there was no advertising claim or promotional slogan, there were repeated verbal references to the Platform. Also, the remarks in relation to the promotional packages of the Platform, together with the repeated mention of the price of some of the promotional packages, amounted to direct encouragement of use of the service of the Platform. Hence, while the indirect advertising of the Platform by TVB complied with the Natural and Unobtrusive Manner Requirement, it violated the No Direct Encouragement Requirement.

Decision

In view of the above, the CA considered that the complaints in respect of TVB's compliance with the No Direct Encouragement Requirement in relation to the indirect advertising for the Platform were justified, and that TVB was in breach of paragraph 2A(a) of Chapter 9 of the TV Advertising Code. Having taken into account the specific facts, the circumstances of the present complaints and other relevant factors (including that the relaxed regulatory regime has come into effect for less than two years and that TVB has largely complied with the relaxed regulatory regime other than two minor breaches), the CA decided that TVB should be **advised** to observe more closely the relevant provision of the TV Advertising Code.