

Complaints dealt with by the Communications Authority (“CA”) in March 2013

In March 2013, the CA considered the following cases which had been deliberated by the Broadcast Complaints Committee (“BCC”) –

Complaint Cases

1. [Television Programme “Blog the World” \(微播天下\)](#)
2. [Television Advertisement for “NIVEA Deodorant Invisible for Black & White” \(“NIVEA無印清爽止汗香氛”電視廣告\)](#)
3. [Television Programme “The Magnificent Concubine” \(楊貴妃\)](#)

Having considered the recommendations of the BCC, the CA decided that

1. that **a financial penalty of \$80,000** be imposed on Asia Television Limited (“ATV”) on the complaints related to the television programme “Blog the World” (微播天下)
2. that **a strong advice** be given to Television Broadcasts Limited (“TVB”) on the complaint related to the television advertisement for “NIVEA Deodorant Invisible for Black & White” (“NIVEA 無印清爽止汗香氛”電視廣告)
3. that the complaint related to the television programme “The Magnificent Concubine” (楊貴妃) broadcast on ATV be classified as **a minor breach**

3 April 2013

Case 1 – Television Programme “Blog the World” (微播天下) broadcast on the Home Channel of ATV on 13-16, 19, 20, 22, 23, 26 & 27 November, 11, 12, 19, 25 & 26 December 2012 and 1 January 2013 at 8:30 pm - 9:00 pm and/or their repeats at 5:30 pm - 6:00 pm the next day

40 members of the public complained about the concerned episodes of the programme. The main areas of the complaints were that –

- (a) the programme was partial. It presented one-sided views against the Chairman of a Company (referred hereafter as “company chairman”) which had submitted an application for domestic free television programme service licence (free TV licence); and
- (b) the programme attacked and tarnished the reputation of the company chairman, a public relations adviser and the Chairman of a media company whose business included the publication of a local newspaper (referred hereafter as “the newspaper publisher”) with unsubstantiated accusations and speculations. The programme was unfair to the three persons as they were not given an opportunity to respond.

The CA’s Findings

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

Details of the Case

- (a) according to the descriptions on ATV’s official website, the programme provides updated information on a wide range of topics including cooking, make-up, pets, travel, sports, news and entertainment;
- (b) all episodes of the programme under complaint carried a caption “以上內容純屬個人意見，與本台立場無關” (English translation: “The contents expressed above are solely personal opinions and do not represent the views of ATV”) in the end roller credits. In some of the episodes, the announcement usually presented at the beginning of a personal view programme (PVP), viz. “本節目內容只反映主持人或個別參與節目人士之意見” (English translation: the programme only reflected the views of the host(s) or individual contributor(s)) was also made prior to the broadcast of the programme;
- (c) in each of the ten episodes broadcast in November 2012, there was a short segment on the company chairman. In the six episodes broadcast on 19, 20, 22, 23, 26 & 27 November 2012, the segment was entitled “維基解密” (English translation: “RickyLeaks”), and starting from 16 November 2012, a footage promoting the “RickyLeaks” segment was broadcast in the programme. In the relevant footage, against a mysterious dark green background, two red horns and a red tail were attached to the picture of the company chairman with the voice over “(該公司主席) 被譽為電訊魔童，佢又幾時開始成魔嘅呢? 佢嘅成魔之路又係點嘅呢? 喺過往佢

又做過啲咩嘢事呢?下星期一全新環節維基解密同大家一一拆解”(English translation: “When did (the company chairman), known as a “ telecommunications demon”, start to become a demon? What is the path leading him to become a demon? What has he done in the past? All will be revealed one by one in our new series, RickyLeaks, next Monday.”);

- (d) most of the segments on the company chairman was around two minutes each in duration, with similar presentation in all episodes. It usually began with recent moves of the company chairman in relation to the Company’s application for a free TV licence, followed by some anecdotes of him when he was the Chief Executive Officer (CEO) of a free TV licensee in 2008. These segments were always ended with remarks casting doubts on the company chairman’s ability or suitability as an operator of free TV service or bringing out the message that the Government should not hasten to grant new free TV licence;
- (e) in the concerned episodes broadcast in December 2012 and January 2013, there was a short segment revolving around the company chairman, the public relations adviser and the newspaper publisher and how they acted together in the Company’s application for a free TV licence. The said segment broadcast on 11 December 2012 was entitled “安達解密”(English translation: “AndyLeaks”). Remarks or contents against the above persons were found¹; and
- (f) the character and/or integrity of the concerned persons were challenged. The newspaper publisher was alleged to have intervened in politics, religion and the media (such as the 19 December Episode), and had partnered with the company chairman in the Company’s application for a free TV licence, and the public relations adviser was also involved in it (the 11 December and 26 December Episodes), with their ultimate goal to intervene Hong Kong politics through newspaper and the electronic media (such as the 26 December and 1 January Episodes), behind which was a political conspiracy to put Hong Kong in turmoil (12 December Episode).

¹ The concerned remarks included the remarks “(某報刊出版商)通過巨額政治捐獻支持反對派”(the episode on 19 December 2012), “違反傳媒道德倫理”, “利用傳媒干預香港政局”, “對香港市民洗腦”, “利用傳媒擾亂香港嘅商人” and “(該名報刊出版商)即使有健康問題,政府也不可能掉以輕心,因為(該公司主席)會乘勢而起”(the 25 December 2012 episode), “呢個時候(某公關顧問)就顯得更加重要喇。一系列開台 show, 高調要向政府施壓等等嘅計劃, 就可以依時策動, 計好時間再由(某報刊出版商)嘅報章爆出行政會議機密資料”(the 26 December 2012 episode) and “申請免費電視牌照是要壟斷市場”(the 1 January 2013 episode).

English translation: The concerned remarks included the remarks “the opposition parties supported by (the newspaper publisher) with huge political donations” (the episode on 19 December 2012), “a breach of the codes of ethics in media”, “taking advantage of the media to intervene in the politics of Hong Kong”, “brainwashing Hong Kong people”, “a businessman taking advantage of the media to cause disturbance to Hong Kong” and “even though the health of (the newspaper publisher) is in trouble, the Government cannot lower the guard because “the company chairman” would ride the wave” (the 25 December 2012 episode), “(The public relations adviser) would become more important at this moment. A series of shows about the launch of new TV channels and the plan to put pressure on the government publicly could be implemented as scheduled. These coincided with the classified information of the Executive Council disclosed by (the newspaper publisher)’s newspapers” (the 26 December 2012 episode) and “the free TV licence applications are to monopolise the market” (the 1 January 2013 episode).

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

- (a) Paragraph 2 of Chapter 9 – due impartiality should be preserved as respects news programmes and any factual programmes (non-fiction programmes which are based on material facts) or segments thereof dealing with matters of public policy or controversial issues of public importance in Hong Kong;
- (b) Paragraph 3 of Chapter 9 – balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance and such programme and programme segment should not be slanted by the concealment of facts or by misleading emphasis;
- (c) Paragraph 5 of Chapter 9 – a programme host should encourage the widest possible airing of views, be alert to the danger of unsubstantiated allegations being made by participants in live programmes, and correct the factual errors to the best of his/her knowledge;
- (d) Paragraph 6 of Chapter 9 – sometimes a series of programme or programme segments may be considered as a whole. The licensee should make editorial judgement based on particular circumstances in achieving impartiality over time;
- (e) Paragraph 9 of Chapter 9 – unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion should be avoided. The licensees should also avoid misleading the audience in a way which would be unfair to those featured in the programme;
- (f) Paragraph 15 of Chapter 9 – licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations. All material facts should so far as possible fairly and accurately presented; and
- (g) Paragraph 16 of Chapter 9 – where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organisation, those criticised should be given an appropriate and timely opportunity to respond.

The CA’s Considerations

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

Nature of the Programme/Segments & the Applicable Impartiality Rules

- (a) The rules under paragraph 17 of Chapter 9 of the TV Programme Code applied to PVPs dealing with “matters of public policy or controversial issues of public importance in Hong Kong”. The rules applied to such programmes as a whole but not a segment with such content in any programme. The concerned programme with contents on a wide range of topics including cooking, make-up, pets, travel, news, etc., as a whole, should not be regarded as a PVP under the regulation of the above provisions, despite some of the episodes under complaint were broadcast

with a prior announcement “本節目內容只反映主持人或個別參與節目人士之意見” (English translation: the programme only reflected the views of the host(s) or individual contributor(s));

- (b) the programme should more properly be regarded as falling within paragraph 2 of Chapter 9 of the TV Programme Code. The concerned segments in all the 16 episodes under complaint were obviously designed as a series to tarnish the integrity and ability of the concerned persons and the purpose of which was to convey the message that the Government should not grant more new free TV licences especially to the Company. With such a message, the series of the segments under complaint, could be considered to be segments (of a programme referred to in paragraph 2 of Chapter 9 of the TV Programme Code) dealing with matters of controversial issues of public importance in Hong Kong which should be subject to the due impartiality requirements under paragraphs 2 to 6 of Chapter 9 of the TV Programme Code;

Impartiality

- (c) ATV had admitted that the episodes under complaint contained one-sided or partial commentaries. With all the episodes under complaint containing partial views against the concerned persons and/or the issue of new free TV licences, ATV had breached the due impartiality rules in Chapter 9 of the TV Programme Code;

Fairness & Opportunity for Response

- (d) the 16 concerned segments taken as a whole presented a story about the concerned persons by trivial anecdotes, scraps of news, or comments from the internet without identification and verification. Together with the criticisms and speculations that followed, these segments had put the integrity of the concerned persons in question. The CA considered that the above, coupled with the demonisation of the company Chairman with the computer graphics, had the effect of misleading the audience in a way which would be unfair to the persons featured in the programme. While the segments under complaint were capable of adversely affecting the reputation of the concerned persons, most of the information submitted by ATV as substantiation for the alleged remarks made against the concerned persons was from secondary sources and there was no evidence that ATV had made any effort to verify the accuracy of these sources. ATV could not be considered to have taken special care in presenting these segments. Hence, ATV was in breach of paragraphs 9 and 15 of Chapter 9 of the TV Programme Code; and
- (e) except for a 20-second footage of a press meeting about the company chairman's denial of ATV's accusation that he had taken confidential documents from ATV when he was the CEO of a free TV licensee in 2008 which was broadcast in the 27 November Episode, there was no evidence that the concerned persons had been invited or given an opportunity to respond to the negative comments made against them in the series of segments. While ATV submitted that the public could give feedback to the programme via ATV's website, it could not be regarded as an appropriate platform and timely opportunity for the persons being criticised to respond. Hence, ATV was in breach of paragraph 16 of Chapter 9 of the TV Programme Code.

Decision

The CA noted that ATV had admitted that the commentaries in the segments under complaint might be considered one-sided and partial. Nonetheless, ATV had sought to make the maximum use of its platform to promote its own interest, with such partial views in the programme. The CA also noted that similar criticisms against the company chairman, the public relations adviser and the newspaper publisher in relation to the issuance of new free TV licences appeared in a number of episodes of another programme “ATV Focus” (ATV焦點) and in certain broadcast materials on ATV around the same period of time. In view of the above and taking into account the substantial number of episodes involved, the cumulative effect of the criticisms on the persons concerned and recent similar contraventions by ATV, the CA decided that a **financial penalty of \$80,000** should be imposed on ATV for breaching paragraphs 2, 3, 5, 6, 9, 15 and 16 of Chapter 9 of the TV Programme Code.

Case 2 – Television Advertisement for “NIVEA Deodorant Invisible for Black & White” (“NIVEA 無印清爽止汗香氛”電視廣告) broadcast on the I News Channel of TVB on 12 August 2012 at 8:28 pm

A member of the public complained that the claim that the advertised product would not leave yellow stains on white clothes was unsubstantiated.

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 (among others) the following –

Details of the Case

- (a) the advertisement under complaint promoted a brand of deodorant. It contained the claim “白衫無黃跡，黑衫無白印” (literally, “no yellow marks on white clothing and no white marks on black clothing”) (referred hereafter as “the Claim”), with the source and year of the relevant tests superimposed at the bottom of the screen; and
- (b) TVB had provided a set of test reports in substantiation of the Claim, which indicated that the advertised product could reduce yellow staining on white clothes and did not leave white marks on dark clothes.

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

- (a) Paragraph 9 of Chapter 3 – no advertisements may contain any claims which depart from truth or mislead about the product advertised or about its suitability for the purpose recommended. The licensee should have his responsibility under this paragraph discharged if he did not know and had no reason to suspect that the

claims made were false or misleading and could not, with reasonable diligence, have ascertained that the claims were false or misleading; and

- (b) Paragraph 1 of Chapter 4 – all factual claims should be capable of substantiation.

The CA's Considerations

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

- (a) the Claim was deliberately phrased and presented in the advertisement in absolute terms. The wording, together with the superimposition of the source and year of the relevant tests, gave viewers an impression that the Claim was a factual claim which was supported by evidence. Moreover, the Claim appeared to be the most important attribute and selling point of the advertised product, which was named “NIVEA Deodorant Invisible for Black & White” (NIVEA無印清爽止汗香氛). Viewers might reasonably believe that the advertised deodorant could prevent the formation of permanent stains on white/black clothing;
- (b) the concerned test reports only revealed that the product could “delay” and “reduce” staining on white T-shirts, which was not capable of substantiating that there was no yellow staining on white clothes as claimed in the advertisement; and
- (c) as an experienced broadcaster, TVB should be able to identify the problematic advertising claim from the test reports submitted by the advertiser before its broadcast. The CA considered that TVB had not exercised reasonable diligence in ascertaining the truthfulness of the Claim.

Decision

In view of the above and taking into account a similar precedent, the CA decided that TVB should be **strongly advised** to observe more closely the relevant provisions in the TV Advertising Code.

Case 3 – Television Programme “The Magnificent Concubine” (楊貴妃) broadcast on the World Channel of ATV on 5 September 2012 at 9:00 pm – 10:30 pm

A member of the public complained that neither English nor Chinese subtitles were provided for the captioned Putonghua film broadcast at prime time on the English channel of ATV.

The CA's Findings

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

Details of the Case

- (a) the programme under complaint was a Putonghua film (i.e. a programme in non-designated language (NDL)) broadcast at 9:00 pm – 10:30 pm on the English channel of ATV, viz. ATV World. Under a blanket approval granted by the former Broadcasting Authority (BA), ATV may broadcast NDL programmes on its English channel for two continuous hours during the period 7:00 pm – 11:30 pm one day per week on condition that, among others, the programme broadcast must carry English subtitles. The same requirement applies to the simulcast digital service of the ATV World Channel. There is no mandatory requirement for the licensee to provide Chinese subtitles on its English language service; and
- (b) to facilitate the investigation of the complaint, the CA requested ATV for recordings of the concerned programme on both the analogue and digital platforms of the ATV World Channel, with specific reminder that the recording of the digital platform should carry English subtitles. Subsequently, ATV provided the relevant recording of the analogue World Channel, which showed that the programme was broadcast with English and Chinese subtitles. However, the recording of the digital World Channel showed the Chinese subtitles only. ATV submitted that English subtitles had been provided via closed captioning during transmission, and that its failure to provide the recording of the digital World Channel with English subtitles was attributed to the default language setting of the recording machine to the Chinese language in this case. Under the circumstances, the CA could not proceed further with the investigation and was unable to substantiate whether ATV was in breach of the relevant licence condition governing the broadcast of NDL programmes on its English language service in respect of the digital World Channel.

Relevant Provision

- (a) Condition 17.5 of ATV's Domestic Free Television Programme Service Licence – the Licensee shall supply recordings of good quality of all material on the television programme service that it provided during such period, and in such form, as the CA may direct and require for examination.

The CA's Considerations

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

- (a) ATV had provided the recording of the analogue World Channel which showed that the concerned NDL programme was broadcast with English subtitles. For the digital World Channel, the benefit of the doubt should be given to ATV, and that no further action should be taken in this aspect; and
- (b) the request of the CA for ATV to supply the recording of the concerned programme broadcast on the digital World Channel was made in accordance with the relevant licence condition to facilitate its investigation of the complaint, and English subtitles were part of the materials provided on ATV's service, in particular when there was a mandatory requirement for ATV to provide English subtitles for the concerned NDL programme. Hence, ATV's failure in providing the relevant recording of the digital World Channel with English subtitles to the CA was in

breach of Condition 17.5 of its licence.

Decision

In view of the above and taking into account the technical nature of the breach, the CA decided that the complaint should be classified as a **minor breach**, and ATV should be reminded of its responsibility to make necessary arrangement in fulfilment of the relevant licence requirements on the broadcast of NDL programmes and supply of recordings.