



## WIN TV Southern NSW

### Accuracy and fairness in current affairs programs

#### The complaint

In June 2004 the ABA received an unresolved written complaint regarding two segments of the Nine Network program *A Current Affair* broadcast by WIN Television on 1 and 2 December 2003. Both segments dealt with the way in which the Australian Bureau of Statistics collects information. The complainant alleged that these segments were inaccurate, one-sided and unfair, because:

- both segments contained a number of exaggerated and incorrect claims
- both segments were unbalanced and one-sided
- the second segment failed to correct errors made in the first segment

- promotions for both program segments were sensational and one-sided and
- one of the segments contained a simulated scene that was not identified as such.

#### Decision

The ABA determined that the licensee of WIN TV, WIN Television NSW Pty Limited, breached clause 4.3.1 of the Commercial Television Industry Code of Practice on three separate occasions during its broadcast of *A Current Affair* on 1 December 2003, in that factual material was not presented accurately.

#### Action taken

In response to the ABA's request for comments on what action would be taken to prevent future similar breaches, the Nine Network advised that it would be using the final report in its regular training sessions. Nine also advised the ABA that

- it conducts regular training programs in legal and compliance issues including the Commercial Television Industry Code of Practice and
- this training, combined with appropriate examples (including any specific example which arises from the publication of the ABA's investigation report) assists in reducing the risk of any breach in future. ☐

## NBN Northern New South Wales

### Failure to check loudness of ads

The ABA has found that NBN Ltd, the licensee of commercial television service NBN Northern New South Wales, breached the Commercial Television Industry Code of Practice, by broadcasting two advertisements in July 2004 without ensuring that all requirements concerning noise compression, limiting and equalisation had been met.

On 15 October 2004, the ABA received a complaint alleging that advertisements broadcast on NBN were excessively loud. The complainant cited two advertisements specifically: one for Cardiff Toyota and another for the Morisset Power Barn. The licensee advised that Cardiff Toyota advertisements broadcast on or around 16 July 2004 did not fit the description provided by the complainant. Advertisements for the Morisset Power Barn were broadcast on 16 July. These were re-

ceived on 6 July 2004 and were delivered without certification. Southern Cross TEN, which produced the advertisements, provided this certification on 5 November 2004.

The ABA found that the licensee did not ensure, before broadcasting advertisements for the Morisset Power Barn on 16 July 2004, that relevant requirements in relation to loudness of advertisements had been met. Accordingly, the licensee breached clause 1.14 of the code.

The ABA notes that in response to the breach finding, the licensee has made amendments to its operational practices by ensuring all staff engaged in the process of accepting, dubbing and playing of television commercial content had been made aware of the necessity of compliance with the code. In addition, it undertakes technical checks on every advertisement dubbed into its on-air play-

ing system; plus regular training and refreshers.

The ABA also found that the licensee did not provide a response to the complaint within 30 working days after receipt of the complaint. Accordingly, the licensee breached clause 7.10 of the code. In addition, the ABA found that the licensee's reply did not advise the complainant that he might refer the matter to the ABA if not satisfied with the licensee's response. Accordingly, the licensee breached clause 7.12 of the code.

In response to the ABA's preliminary report, the licensee offered its apologies to the ABA and the complainant and advised that during the course of the investigation, it had restructured its process of handling complaints. The ABA considers these actions address the compliance issues raised by the investigation



and will continue to monitor the licensee's performance in these areas.

## Relevant sections of the code

1.11 Commercials must not be excessively noisy or strident.

1.12 Licensees must do everything reasonably possible to ensure that commercials do not sound louder than adjacent programming.

1.13 Studio transmission must not be increased from normal levels during program breaks.

1.14 A licensee shall be deemed to have complied with Clauses 1.11 and 1.12 provided it ensures that the relevant requirements of Free TV Australia's Operational Practice Note on Loudness of Advertisements, as amended from time to time, have been met. This requirement is satisfied if a person submitting a commercial certifies to the licensee that all requirements of the Operational Practice Note on Loudness of Advertisements concerning compression, limiting and equalisation have been met.

7.10 [A licensee's response to a Code complaint] must be made as soon as practicable, but in any case no longer than 30 working days after receipt of the complaint.

7.12 In all cases, a licensee's substantive reply will also advise the complainant that he or she may refer the matter to the ABA if not satisfied with the licensee's response.

## The complaint

On 15 October 2004, the ABA received a complaint that advertisements broadcast on NBN were excessively loud. The complainant cited two advertisements specifically: one for Cardiff Toyota and another for the Morisset Power Barn. The complainant described the Cardiff Toyota advertisement as featuring 'a little man with a loud hailer who trumpets the benefits of buying Toyotas' and the Power Barn advertisement as featuring 'a 'Ma & Pa Kettle' type couple who scream the benefits of the Power Barn at Morisset' in a manner intended to be humorous.

The complainant also said he had written to the licensee about the matter on 26 July 2004, and received no reply.

## Loudness of ads

The ABA sought details of the advertisements from the licensee. In response, the licensee advised that Cardiff Toyota advertisements broadcast on or around 16 July 2004 did not fit the description provided by the complainant. In the case of the Morisset Power Barn, the licensee advised that two advertisements fitting the description provided by the complainant were broadcast on 16 July 2004.

The ABA also sought information from

the licensee about the handling of the complaint. In response, the licensee provided a copy of a response sent to the complainant via email on 18 October 2004, ie three days after the ABA received the complainant's complaint.

The licensee submitted that advertisements for the Morisset Power Barn, were received on 6 July 2004 and were delivered without certification. The producer of the advertisements, Southern Cross TEN, subsequently provided this certification in a letter dated 5 November 2004.

The ABA notes that in response to the breach finding, the licensee has taken the following steps:

- it has made amendments to its operational practices by ensuring all staff engaged in the process of accepting, dubbing and playing of television commercial content had been made aware of the necessity of compliance with OP-48 and
- its training process now includes: technical checks on every advertisement dubbed into its On Air playing system; regular training and refreshers by ... a member of the Free TV Technical Committee involved with OP-48 and reliance on advertisements having Free TV Australia's CAD Acceptance Numbers. All advertisements produced by NBN Television are OP-48 compliant. ☐

## TCN 9 Sydney

### Threat and menace in promotions in G

#### Complaint

In April 2004, the ABA received a written complaint concerning the content of a program promotion for the M classified movie *The Specialist*, broadcast by TCN 9 on 1 February 2004 during a G timezone. The complainant expressed concern that 'voiceover phrases were written with strong sexual overtones and were accompanied by scenes of explosions, violence and sexual allusions'. The complainant also claimed not to have received a response from the licensee.

#### Decision

The ABA determined that the licensee of TCN, Nine Network Sydney Pty Ltd breached clause 3.8 of the Commercial Television Code of Practice for broadcasting material, during a G viewing period, which contained more than a very low sense of threat and menace. The ABA also determined that the licensee breached clause 7.10 of the code for failing to respond to a complaint 'as soon as practicable, but in any case no longer than 30 working days after receipt of the complaint'.

#### Action taken

The licensee accepted the ABA's findings on this matter and has taken action to prevent future similar breaches of the code. The ABA's records indicate that this is the first occasion on which the licensee has breached clause 3.8 of the code, and that the licensee has not breached clause 7.10 in the past three years.

The ABA notes that these breaches are not part of a pattern of breaches by the licensee and does not propose to take any further action in relation to the breach findings. ☐