

INVESTIGATIONS

breaches by **broadcasters**



Children's Television Standards—premium offers must be incidental

ACMA has found that Network Ten (Melbourne) Pty Ltd did not comply with the *Children's Television Standards 2005* (the CTS) in October 2006 with its broadcast of an advertisement for Nestle Milo Cereal during a C period. Despite this finding, ACMA did not take enforcement action because Ten relied on an earlier Australian Broadcasting Authority (ABA) ruling. ACMA decided the ABA ruling incorrectly applied the CTS.

The licensee breached the licence condition set out at paragraph 7(1)(b) of Schedule 2 to the *Broadcasting Services Act 1992* and clause 6.20 of the *Commercial Television Industry Code of Practice 2004*.

ACMA received a complaint that the licensee broadcast an advertisement for Milo Cereal that was in breach of CTS20. Among other things, this standard requires that, if an advertisement broadcast during a C period contains a premium offer, reference to the premium must be incidental to the main product advertised.

ACMA found that in the advertisement for Milo Cereal the reference to the premium offer—a CD-ROM—was more than incidental to the main product advertised—the cereal.

The licensee submitted that it broadcast the

advertisement in good faith based on the existing regulatory principles established by the ABA.

In 2001, the ABA investigated a number of advertisements for edible products for alleged breaches of CTS20.

The ABA held the view that the primary purpose of CTS20 was to ensure that a premium offer should not stimulate any unreasonable expectation of the product or services advertised, and that whether or not references to the premium were incidental should be considered in that context.

In investigating the Milo Cereal advertisement, ACMA formed the view that the reasoning adopted by the ABA was incorrect and that its particular reading of CTS20 was flawed.

ACMA Chairman Chris Chapman said: 'I

acknowledge the approach established by the ABA but ACMA is not bound to follow previous interpretations that we consider to be incorrect.'

In this instance, ACMA has decided not to take enforcement action against the licensee, noting its reliance on the previous ABA decision. ACMA will now ensure that all free-to-air commercial broadcasting licensees are aware of the correct interpretation of CTS20.

A copy of the investigation report is available on the ACMA website at www.acma.gov.au (go to About ACMA: Publications & research > Publications > Broadcasting publications > Investigations > Television operations investigations > Television operations – VIC commercial tv investigations).

Broadcast of *Californication* episode breached code

ACMA has found that Network Ten (Sydney) Pty Ltd and Network Ten (Perth) Pty Ltd breached the *Commercial Television Industry Code of Practice 2004* on 29 October 2007 by broadcasting an episode of *Californication* that was incorrectly classified MA (Mature Audience).

The finding is in response to two separate complaints about sexual activity and nudity depicted in episode 10 of the series. ACMA found that sexual activity depicted in one scene was not discreetly implied or discreetly simulated, as required under the code, due to the length of the scene, the amount of detail it contained and its conceptual strength.

While Network Ten advised that the program had been edited to meet the Australian classification guidelines, ACMA found that this was insufficient. As a result, the program was not suitable for television. The MA category comprises

the strongest material that is permitted for broadcast on commercial television (apart from the Adult Violence category).

Network Ten will be required to distribute the investigation report to its classifiers and ensure that future classification decisions are consistent with ACMA's findings, including any subsequent broadcasting of the specific *Californication* episode.

'Network and licensee management have a collective responsibility in ensuring compliance with the code,' said ACMA Chairman Chris Chapman. 'If, in spite of these actions, a Network Ten licensee subsequently breaches the MA classification guidelines for a drama program, it could warrant use of ACMA's formal powers.'

In considering appropriate responses to this breach, ACMA noted that this is the first

classification-related breach of the code by Network Ten since 2005. It is also the first time a commercial television licensee has been found to have breached the MA classification with the broadcast of a drama program since 2003.

'The publication of breach findings over time serves to inform all commercial broadcasting licensees—not only those to whom the breach findings relate—and the community about the types of program material that are considered appropriate for the classifications contained in the code,' said Mr Chapman.

A copy of the investigation report is available on the ACMA website at www.acma.gov.au (go to About ACMA: Publications & research > Publications > Broadcasting publications > Investigations > Television operations investigations > Television operations – NSW commercial tv investigations).