

Television commercial code breakers strike again

A code of practice governing advertising time limits on television is prone to misinterpretation by television networks keen to squeeze in as much paid advertising as possible into their program schedules. It must be reviewed

An overload of television commercials? The Australian Broadcasting Authority (ABA) thinks so. In a report released on October 27, 1998, the authority found that Prime Television (Northern), a licensee of commercial television service NEN Northern NSW, and Amalgamated Television Services (ATN 7, a licensee of Seven Network service ATN Sydney) breached the Commercial Television Industry Code of Practice concerning the amount of advertising or non-program matter scheduled to be broadcast.

Non-program matter is defined in the code of practice as:

- spot commercials, namely advertising for products, services, beliefs or courses of action scheduled within program breaks or between programs, or by full-frame visual superimposition on a program, and for which licensees receive payment or other valuable consideration. This includes bonus and make-good advertisements but excludes community service announcements, election authorities' announcements and sponsorship announcements;
- community service announcements - those which promote a charitable cause or activity or constitute a public service and are broadcast pro bono by a licensee; and
- program promotions - station IDs and program line-ups which contain more than 10 seconds of visual material but exclude voiceover promotions transmitted during the closing credits of a program, or superimposed text occupying part of the screen.

Prime Northern and ATN 7 are not the only ones exceeding the amount of advertising scheduled in breach of the code:

- The Ten Network is currently under investigation by the ABA following a viewer complaint that it scheduled too much advertising between 7-8pm one night in May 1998 during the broadcasting of U.S. sitcoms Seinfeld and Mad About You;
- TCN Channel Nine, licensee of commercial television station TCN Sydney, was investigated by the ABA earlier this year after Seven complained about an excess of advertising.

The ABA's investigation into TCN found that the station broke advertising time limits 27 times on the 17 nights between April 6 and May 3 this year, according to a report released in August 1998 by the ABA.

The investigation focused on non-program matter scheduled between 6pm and midnight (the six hour period regarded by the code as prime time). The code limits the amount of advertising in prime time to an average of 13 minutes an hour, or 15 minutes in

any one hour. In other words, over the six hours of prime time, 78 minutes of advertising is permitted according to the code. On each of the nights investigated, TCN exceeded the amount of scheduled non-program matter allowed.

The ABA report highlighted two particular segments of a commercial nature which TCN had incorrectly regarded as community service announcements. One, from Amcal chemists, was about getting good advice on natural remedies, herbal medicines and vitamin supplements. The other, from Dulux, showed an interior decorator discussing colour coordination in the home.

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TCN counted both segments as unpaid "community service announcements", which meant they did not have to be counted as non-

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program matter. It wrote to the ABA on July 15 that the Amcal segment covered the public benefits of "choosing wisely" between the "confusing" variety of natural remedies on the market. And the Dulux segment "provided helpful tips on how viewers could brighten up their homes".

The ABA disagreed. Such an interpretation is "untenable. The ABA views with real concern the attempt by TCN in its letter...to justify regarding these segments as community service announcements", it replied.

Professor David Flint, ABA chairman at the time, said that while advertising was the lifeblood of commercial television broadcasting, it had to be balanced, as far as was reasonably possible, with the viewers' wish to see programs uncluttered by excessive advertising.

Flint also acknowledged that there were problems in understanding and applying the present code which was open to subjective interpretations. For example, the code registered with the ABA imposes firm limits on the scheduling of advertising, not that actually broadcast.

So, upon receiving a complaint about the level of advertising broadcast, a station must provide the ABA with the advertising *schedule* for that day. In TCN's case, the first schedule offered was the one prepared the day prior to the broadcast but it was withdrawn and replaced by one prepared a week in advance.

Given any last minute advertiser inclusions or changes, a schedule prepared a week in advance would bear little relation to the advertising broadcast on the day. This kind of requirement also leaves the stations open to accusations of deliberately evading the code by refusing to supply a schedule prepared closer to the time.

So, having pointed the finger at a Nine Network affiliate, the Seven Network had to eat humble pie for its Prime Northern and ATN 7 stations, both scrutinised after a viewer complained to the ABA in July 1998 about the amount of advertising scheduled during the feature film *The African Queen*, broadcast in November 1997.

The ABA found that Prime Northern and ATN 7 had exceeded the amount of non-program matter permitted per hour in two of the hours between 6pm and midnight on November 21, 1997. Both stations had also exceeded the maximum of non-program matter permitted over the six hour prime time period on that night.

The two broadcasters accounted for the excess non-program matter as time "made up from the commercial-free broadcast of the movie *Schindler's List*, which occurred a few days after *The African Queen* was broadcast.

The code of practice allows licensees to "make up" time in this way when they broadcast programs of a "clearly charitable or community service nature without the insertion of non-program matter". They have two weeks either side of the broadcast to make up the time and are allowed to schedule up to one minute of extra advertising per hour to make up for lost time.

Unfortunately, Prime Northern and ATN 7 scheduled more than one extra minute per hour during the screening of *The African Queen* and this was brought to the attention of the ABA by a watchful viewer.

The ABA stance on this occasion was that the provision in the code was aimed at the make up of non-program matter displaced by the broadcast of programs with a clearly defined community or charitable objective (such as telethons), rather than the commercial-free broadcast of programs primarily provided for entertainment - however much they may provide a lesson to humanity or deal with particularly sensitive or

distressing issues.

"While the views of Prime Northern and ATN 7 are noted, the ABA does not accept this as justification for the excess amount of non-program matter broadcast on November 21, 1997," stated the ABA in its report.

Subsequent to the ABA reports on the Nine and Seven Network affiliates, the rather generous interpretation of the code undertaken by each has led the ABA to request the Federation of Australian Commercial Television Stations (FACTS) to review section 123 of the *Broadcasting Services Act 1992*.

Acting ABA chairman Gareth Grainger said that the investigations into Prime Northern and ATN 7 revealed further evidence of confusion and misunderstanding in interpreting the code.

"Neither the public nor commercial television broadcasters are well served by this. I am pleased that the industry has responded in a positive way, and has agreed to review this section of the code," he said.

As the review must be done in consultation with the commercial television networks and the public, the timeframe for eventual delivery of a draft review for approval by the ABA is a little hazy.

"FACTS is reviewing the whole code of practice at the moment because there are several other issues, such as running MA-classified movies in a later timeslot than 8.30pm, which need to be attended to," said an ABA spokesman.

"The whole section must be reviewed and clarified after public consultation. But if the draft provided is not satisfactory, then we won't accept it."

Karen Winton