



Australian Government
**Australian Communications
and Media Authority**

Investigation Report No. 2039

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| File no. | ACMA2008/1266 |
| Licensee | Swan TV and Radio Broadcasters Pty Ltd |
| Station | STW |
| Type of service | Commercial Broadcasting Service (Television) |
| Name of program | <i>Kitchen Nightmares – Sebastian's</i> |
| Date/s of broadcast | 18 March 2008 |
| Relevant legislation/code | <i>Broadcasting Services Act 1992</i> , section 148 Commercial Television Industry Code of Practice 2004: <ul style="list-style-type: none">• Clause 2.4 (Classification of Other Material)• Clause 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines) |

Investigation conclusion

The Australian Communications and Media Authority (ACMA) finds that the program *Ramsay's Kitchen Nightmares – Sebastian's* broadcast by Swan TV and Radio Broadcasters Pty Ltd, the licensee of STW, on 18 March 2008 contained frequent use of coarse language which was not particularly important to the storyline or program context. ACMA therefore finds that the licensee incorrectly classified the program M according to clause 4.3 of the Television Classification Guidelines set out at Appendix 4 of the Code, and breached clause 2.4 of the Commercial Television Industry Code of Practice 2004 (the Code) in relation to this broadcast.

The complaint

ACMA received a written complaint about an episode of *Kitchen Nightmares* broadcast on 18 March 2008. The complainant alleged that the M-classified program contained offensive coarse language. Not satisfied with the written response provided by the licensee, the complainant forwarded the matter to ACMA for investigation.

The program

Kitchen Nightmares is a reality television program in which the host, celebrity chef Gordon Ramsay, attempts to rehabilitate failing restaurants. This episode concerns Ramsay's attempt to save LA pizzeria, Sebastian's. The program was broadcast at 8.30pm. It was classified M and was preceded by a consumer advice warning which stated that the program contained: 'Frequent Very Coarse Language'.

Assessment

The assessment is based on a copy of the relevant broadcast, provided to ACMA by the licensee and submissions from the complainant, the licensee and the Nine Network.

The *Broadcasting Services Act 1992* (the BSA) requires the commercial television industry to develop a code of practice relating to programming matters, including classification of material and specification of time zones in which material classified other than G can be broadcast. In relation to these matters, the Code:

- Reproduces guidelines made under the Classification Act for the classification of films, and also contains the Television Classification Guidelines which apply to material other than films and news and current affairs programs.
- Requires broadcasters to supply consumer advice on certain material. Consumer advice gives viewers information about particular classifiable elements that have contributed to a program's classification and intends to assist viewers in making informed choices about the type of programming that is suitable for them and their families to watch.
- Proscribes the broadcast of certain types of material under any circumstances.

The BSA also requires ACMA to investigate unresolved complaints about matters covered by the Code.

The objectives of the classification scheme set out in the Code include that:

- Each broadcast day is divided into classification zones which are based on the majority audience normally viewing at that time, with particular regard to the child component of the audience.
- Only material which is suitable for a particular classification zone is broadcast in that zone.

As the program was classified M and broadcast at 8.30 pm during an M time zone, the Code requires that it be classified in accordance with the M provisions of the Television Classification Guidelines set out in Appendix 4 of the Code.

Relevant provisions

The Code contains the following provisions that are relevant in the matters raised by the complainant:

SECTION 2: CLASSIFICATION

...

Classification of Other Material

2.4 **All other material for broadcast:** Subject to Clauses 2.3 and 2.4.1, all other material for broadcast must be classified according to the Television Classification Guidelines (set out in Appendix 4) or, where applicable, the stricter requirements of Section 3: Program Promotions and Section 6: Classification and Placement of Commercials.

...

Appendix 4: Television Classification Guidelines

The Mature (M) Classification

4. Material classified M is recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is treated.

4.3 Language: The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.

Complainant's submissions

The complainant expressed concern about the frequency of coarse language contained in the program and its aggressive use.

Licensee's submissions

Swan TV and Radio Broadcasters Pty Ltd (a division of WIN Corporation), the licensee of STW, submitted that it broadcasts Nine Network Australia programs in accordance with a program supply agreement with the Nine Network and as a consequence relies on the Nine Network for classification advice. The licensee and the Nine Network have both made submissions in relation to the broadcast of this program.

The licensee's submission of 10 June 2008 stated that:

The M classification... is clearly not for viewing by persons under the age of 15 years. The licensee broadcast consumer warnings at the commencement of the program and consumer graphics on the return from commercial breaks to ensure viewers were advised of the content of the program.

The Nine Network's submission of 10 June 2008 stated:

The language use is... justified by the context of the Program as it is a real life portrayal of a restaurant kitchen.

Nine notes that the Program does feature multiple uses of the coarse word 'fuck' and its variations, and acknowledges that from time to time its use may be frequent. Nine also notes that the Host does not use a large amount of additional coarse language throughout the Program. In this regard, the entire element of coarse language is often confined to the use of this one coarse word. In the Program, the Host uses this one coarse word in many contexts, however he never uses it in the sexual sense and rarely uses it in an aggressive manner. Instead, the Host uses the word as part of his ordinary vernacular to convey a range of emotions.

... When assessing the appropriate classification for a program with respect to language, Nine places a high importance on contextual matters such as whether its use was aggressive or demeaning, to whom the language was directed, and the setting in which the language was used.

...In the context of the Program, Nine contends that the language use was justified within the meaning of clause 4.3 of Appendix 4 as it was necessary to depict the tension between the Host and the Owner. Nine believes the language use illustrates the strength of both the Host and the Owner's reaction to particular events and therefore helps draw the audience in to the real life drama they are witnessing.

The licensee's response to ACMA's preliminary report stated that:

The Nine Network will take appropriate steps to ensure that the episodes will be amended to ensure compliance with the Commercial Television Industry Code of Practice should the episodes/series be repeated or new series scheduled in the future, subject to ACMA's final Investigation Report.

The Nine Network's response to ACMA's preliminary report states that:

Nine believes that the coarse language used in the Programs could be contained within the M classification provisions.

...

Nine does not accept that a program such as *Ramsay's Kitchen Nightmares* cannot be contained within the M Classification or indeed a lower classification. It is clear that if the language was edited altogether, both the Programs would be capable of receiving a PG Classification. This is in keeping with many other PG programs which deal with adult environments and situations

...

[T]he episode Sebastian's contained 48 uses of the word "fuck" or its derivatives which amounted to 0.6% of all spoken words.

Nine believes that such small percentages of coarse language use can be described as minimal relative to the programs total spoken language and therefore not 'frequent' for the purposes of the Code. Nine notes that while the consumer warnings provided apply the term "frequent coarse language", this is as a result of the lack of appropriate consumer advice for "infrequent coarse language" available to the licensee. Historically, Nine has used the term "some coarse language" when there are less than 20 instances of coarse language within a 1 hour program. Conversely, Nine applies the advisory "frequent coarse language" when there are more than 20 uses.

...

Nine also notes a relevant test for determining frequency is whether or not the ordinary reasonable viewer would consider the coarse language use frequent. Nine notes that the series and in particular the Programs attracted large audiences which clearly indicates community acceptance of the language use...

Gordon Ramsay's "warts and all" approach to the restaurant rescues is integral to the program context. Nine maintains that Gordon Ramsay's language differentiates the Programs from other similar programs. While the language could be removed, his use of coarse language is accepted by viewers as part of the reality of Gordon Ramsay's kitchen environment.

...

Nine believes that Gordon Ramsay's language is more justified than in some scripted dramas, where language is manufactured and not necessarily based in reality. As the use of 'fuck' language is common place in many work places, in an adults reality show, where the camera is merely recording what actually occurs, it is not only appropriate to include the coarse language but it is also required if the show is to give any kind of true indication of just what life, work and language is like.

...

Despite the above, Nine undertakes to make further edits to future episodes of Ramsay's Kitchen Nightmares to reduce the frequency of coarse language or any aggressive coarse language that could be reasonably taken to be high. Nine believes these steps will more than ensure the series can be contained within the M Classification provisions.

Nine also submitted that terms contained in the Code must be given their proper meaning and application, and that the specific circumstances of the program needed to be considered when determining whether material was 'particularly important' to the 'program context'.

Reasons for the decision

The Television Classification Guidelines establish a scale for the use of coarse language that is permissible at each classification, ranging from very mild coarse language, which is permissible in G-classified programs in certain circumstances, to very coarse language, which is permissible in MA-classified programs when appropriate to the story line or program context and not overly frequent or impactful. As noted above, the guidelines for M-classified programs only permit the use of coarse language that is:

- appropriate to the storyline or program context,
- infrequent, and
- not very aggressive.

Such language 'may be used more than infrequently only in certain justifiable circumstances, when it is *particularly important* to the storyline or program context' (emphasis added).

As noted above, the licensee submitted that coarse language contained in the program was both infrequent, and particularly important to the story line or program context.

Whether the program contained frequent coarse language

The Nine Network has argued that 48 instances of ‘fuck’ language amount to 0.6% of spoken words over the 60 minute period (including time occupied by news and commercial breaks), and that viewers would regard this proportion of coarse language as infrequent. However, it has not demonstrated that viewers perceive coarse language in this way, other than by referring to the number of viewers who are estimated to have seen the program, as an indication of community acceptance of the material.

ACMA does not accept that viewers of television programs are likely to perceive the frequency of coarse language as a percentage of the total words spoken in a program. ACMA considers that the ordinary meaning of ‘frequency’ implies assessment of the number of times an event occurs in a given period. The Macquarie Dictionary defines ‘frequent’ and ‘infrequent’ in the following terms:

frequent /'freekwuhnt/ adjective; /fruh'kwent/ verb – adjective

1. happening or occurring at short intervals: *to make frequent trips to a place.*
2. constant, habitual, or regular: *a frequent guest.*
3. at short distances apart: *a coast with frequent lighthouses.*
- verb (t)
4. to visit often; go often to; be often in.

....

infrequent /in'freekwuhnt/ adjective

1. happening or occurring at long intervals or not often: *infrequent visits.*
2. not constant, habitual, or regular: *an infrequent visitor.*
3. not plentiful.

ACMA therefore considers that viewers are likely to perceive the frequency of coarse language in terms of the number of times it is heard in a program, having regard to the length of the program, and that 48 uses of coarse language in a 60 minute period is likely to be regarded as frequent coarse language by viewers, regardless of the total number of words spoken during that period. ACMA does not accept that the coarse language could be regarded as ‘happening or occurring at long intervals or not often’.

For the above reasons ACMA considers the program contained frequent coarse language.

Whether the frequent coarse language was particularly important

In relation to whether the frequent use of coarse language was *particularly important* to the story line or program context, the Nine Network has argued that the program context is a ‘real life portrayal of a restaurant kitchen’ where the language reflects how the kitchen workers speak in the real world, and that Ramsay’s language ‘helps draw the audience in to the real life drama they are witnessing’. ACMA considers that the program also could be characterised as a ‘reality television’ program which depicted the rehabilitation of a failing restaurant through changes to its menu and interior design, under the guidance of successful celebrity chef and restaurateur, Gordon Ramsay. In either case, it is noted that almost all of the coarse language in the program is used by Ramsay, both in the course of confrontations with the restaurateurs and colloquially as an amplifier. Ramsay’s use of coarse language is one

aspect of his confrontational style and boisterous personality, but it is not considered that his propensity to use coarse language is of itself *particularly* important to the program's story line or context. The language bears little relationship to the changes that Ramsay makes to the business, other than that it features in his conversations with the owner, chef and other staff. While the coarse language may have an impact on viewers and 'draw them in,' this does not equate to the language being *particularly* important to the story line or program context.

ACMA also considers that the characteristics of some personalities, environments and situations are such that the coarse language associated with them may not be able to be faithfully portrayed in every detail in an M-classified 'reality television' program, and for this reason the Television Classification Guidelines provide a higher classification for material that is of higher intensity. If taken to their limits, the inclination of a character to use coarse language, the nature of a particular working environment, or other characteristics of 'real life' situations may otherwise justify any amount of such language in an M-classified 'reality television' program.

Whether the program contained very aggressive coarse language

While coarse language may be used more than infrequently in certain justifiable circumstances, it must not be very aggressive under any circumstances. The Nine Network has argued that coarse language must carry inherent threats of menace or violence if it is to be regarded as aggressive. However aggressive language can also be characterised by the forceful and vigorous tone and manner in which the language is conveyed. The language is occasionally used with some vigor in the program, for example in a scene in which Ramsay and the chef are at loggerheads about the chef's return to the old menu. However its use is not considered to be sufficiently forceful or vigorous to amount to very aggressive coarse language.

Decision

The Australian Communications and Media Authority determines for the above reasons that Swan TV and Radio Broadcasters Pty Ltd, licensee of STW, in relation to the broadcast of *Kitchen Nightmares – Sebastian’s* on 18 March 2008:

- breached clause 4.3 (M Classification – Language) of Appendix 4 of the Commercial Television Industry Code of Practice (July 2004); and
- breached clause 2.4 (Classification of Other Material) of the Commercial Television Industry Code of Practice (July 2004).

The Common Seal of the Australian Communications and Media Authority was affixed to this document in the presence of:

Signature of Member

Signature of

Name

Name

Dated 2 October 2008