



**Australian  
Broadcasting  
Authority**

## Investigation Report

File No: 2004/0505

Investigation No: 1379

<b>Licensee</b>	Network 10 Melbourne Pty Ltd
<b>Station</b>	ATV 10
<b>Type of Service</b>	Commercial Television
<b>Name of Program</b>	<i>Cold Mountain</i> and <i>The Last Samurai</i> promotions and sponsorship announcements
<b>Date/s of Broadcast</b>	<i>The Last Samurai</i> sponsorship announcements on 5/1/2004 to 9/1/2004 <i>Cold Mountain</i> promotion on 1/1/2004 and 5/1/2004
<b>Relevant Legislation/Codes</b>	Clauses 6.17, and 3.14 of the Commercial Television Industry Code of Practice (the Code)

### The Complaint

On 11 March 2004, the Australian Broadcasting Authority (the ABA) received a written complaint concerning promotions and sponsorship announcements for MA classified films *Cold Mountain* and *The Last Samurai*. The complainant contended that these promotions and sponsorship announcements were broadcast by Network 10 Melbourne Pty Ltd (ATV 10) during G classified programs *Seinfeld*, *The Simpsons* and *Everybody Loves Raymond*, on 1 January 2004 and in the week commencing 5 January 2004.

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## The Promotions

- On 1 January 2004, at 8:08pm, a commercial for *Cold Mountain*, an MA classified film was broadcast during a G classified episode of *Everybody Loves Raymond*.
- On 5 January 2004, at 7.48pm, a commercial for *Cold Mountain*, was broadcast during a G classified episode of *The Simpsons*.

Sponsorship announcements for *The Last Samurai*, an MA classified film, were broadcast from 5 to 9 January 2004 at the commencement of G classified episodes of *Seinfeld*.

## Assessment

The ABA viewed copies of transmission schedules and considered comments supplied by the licensee at the ABA's request.

### *Licensee's submissions*

The licensee admits breaches of clause 3.14 in regard to the broadcast of a commercial for the MA classified film *Cold Mountain* during G classified programs *Everybody Loves Raymond* and *The Simpsons* on 1 and 5 January 2004. The licensee notes that episodes for these programs at the 7:30 to 8:30 time slot are often PG and commercials for MA films can be shown during such episodes at that time. The licensee states that on the days in question:

the episodes were G and therefore the special rule in clause 3.14 operated to preclude the broadcast of commercials for MA films...this error was a human error by our scheduling department. The specific requirements of clause 3.14 in relation to the 7.30-8.30pm timeslot have been reinforced to our scheduling department to prevent a recurrence.

In regard to the sponsorship announcements for *The Last Samurai* at the commencement of *Seinfeld* episodes, the licensee states:

Ten confirms that sponsorship announcements, or billboards, for *The Last Samurai* were broadcast at the commencement of *Seinfeld* during 5-9 January 2004...the lack of specificity in the letter of complaint and its reference to the clause which applies to television commercials led us to investigate whether there were any commercials for the film placed during *Seinfeld*. There were not. We did not assess the billboards for the program.

...

Under the Code, sponsorship announcements are exempt non-program matter (clause 5.5.4) and specifically distinguished from television spot commercials. As they are not commercials they are not subject to the placement of commercials provisions in section 6 of the Code. It follows that clause 6.17 (and therefore clause 3.14) do not apply to sponsorship announcements for films. Accordingly, Ten's placement of the sponsorship announcements for *The Last Samurai* during *Seinfeld* was in accordance with the Code.

### **Relevant clauses of the Code**

In regard to the outstanding issue of sponsorship announcements the ABA notes that Section 5 of the Commercial Television Industry Code of Practice (the Code) addresses the time occupied by non-program matter and aims to ensure that there is a reasonable balance between program and non-program matter broadcast by a licensee. This section provides some flexibility in scheduling non-program content, sets limits on the amount of

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commercial and promotional matter in any one hour and refers to ‘exempt non-program matter’.

5.5 **Exempt non-program matter:** For the purposes of this Section, none of the following will be counted as non-program matter:

...

5.5.4 a sponsorship announcement, before or after a program or segment, provided that:

5.5.4.1 it is made clear to the viewer that there is a sponsorship relationship between the sponsor and the program;

5.5.4.2 it makes no reference to the price of goods or services;

5.5.4.3 it consists of no more than 10 seconds, in the case of a single sponsor, or 10 seconds per sponsor in the case of multiple sponsors, to a maximum of 30 seconds in any instance;

Section 5 of the Code differentiates between a sponsorship announcement and a television commercial by giving a sponsorship announcement the status of being ‘*exempt non program matter*’. The ABA is of the view that this differentiation and the status given to sponsorship announcement is specifically for the purposes of Section 5.

The Code does not provide definitions for ‘commercial’ and ‘sponsorship announcement’. However, the Macquarie Dictionary (Revised Third Edition) offers the following definitions:

‘commercial’: Radio, TV an advertisement

‘*sponsor*’: A person, firm, or other organisation that finances a radio or television program in return for advertisement of a commercial product, a service, etc.

‘*announcement*’: 1. public or formal notice announcing something. 2. the act of announcing.

The ABA notes the licensee’s response that the primary purpose of a sponsorship announcement is to state the sponsorship relationship between the sponsor and program. The ABA is of the view that the sponsorship announcement in this case provides more than just a mention of that relationship. It refers to a specific service, in this case the cinema film *The Last Samurai*. Based on the above definitions and the nature of this sponsorship announcement, the ABA is of the view that it constitutes a commercial for a cinema film. While a sponsorship announcement may be exempt from some of the provisions outlined in Section 5, the ABA is of the view that it may also be subject, in some circumstances, to the provisions relating to the placement of commercials in Section 6 of the Code and the provisions relating to television promotions in Section 3 of the Code.

The ABA therefore assessed the complaint against clauses 6.17 and 3.14 and of the Code.

**Commercials for Cinema, Video, Videodisc or Interactive Films and Video, Computer or CD Games**

6.17 Subject to Clause 6.19, a commercial for a cinema film, video film, videodisc film or interactive film, or for a video game, computer game or CD game must be scheduled in accordance with Section 3: Program Promotions.

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**Promotions for Programs Classified MA or AV**

3.14 A promotion for MA or AV programs may not be broadcast between 5.00am and 7.30pm on any day or in G programs between 7.30pm and 8.30 pm on any day.

In regard to Clauses 6.17 and 3.14, the ABA notes:

- On 1 January 2004, at 8:08pm, a commercial for the MA classified film *Cold Mountain* was broadcast during a G classified episode of *Everybody Loves Raymond*.
- On 5 January 2004, at 7.48pm, a commercial for the MA classified film *Cold Mountain* was broadcast during a G classified episode of *The Simpsons*.
- From 5 January 2004 to 9 January 2004 a commercial for the cinema film *The Last Samurai*, an MA classified film, was broadcast at the commencement of G classified episodes of *Seinfeld*.

The ABA is therefore of the view that ATV 10 did not comply with clauses 6.17 and 3.14 of the Code

## **Conclusion**

The ABA is of the view that ATV 10 breached the relevant clauses at 6.17 and 3.14 of the Code for the broadcast of promotions for MA films during G programs.

## **Decision**

I, James Phillips, A/g Director, Industry Performance and Review Branch, being the appropriate delegated officer of the Australian Broadcasting Authority, determine for the above reasons that the licensee, Network 10 Melbourne Pty Ltd (ATV 10) breached clauses 6.17 and 3.14 of the Commercial Television Industry Code of Practice for the broadcast of commercials for *Cold Mountain* on 1 and 5 January 2004 and sponsorship announcements for *The Last Samurai* from 5 to 9 January 2004.

Signed: -----  
*James Phillips*

dated this 8<sup>th</sup> day of *October 2004*

## **Action Taken**

- The Licensee has indicated that the requirements of clause 3.14 have been reinforced to the scheduling, classification and promotions area to avoid a repeat of the breach. This report will also be provided to key staff.
- The licensee has also indicated that since the ABA's preliminary breach finding, Ten has instituted a specific policy for internally produced sponsorship announcements for cinema films, reflecting the requirements of Clauses 3.14 and 6.17, and ensuring that they are seen by the Network classifiers before being broadcast.