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**CANADIAN BROADCAST STANDARDS COUNCIL  
PRAIRIE REGIONAL PANEL**

*CJAY-FM re Forbes and Friends (graphic discussion)*

(CBSC Decision 03/04-0157)

Decided April 16, 2004

D. Ish (Chair), V. Cownden, D. Dobbie, V. Dubois, J. Fong and R. Gallagher

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**THE FACTS**

A discussion of a current event, a joke and a parody commercial were aired on CJAY-FM (Calgary)'s morning radio show, *Forbes and Friends*, on October 10, 2003. The discussion commented on the details of the alleged rape committed by American basketball player Kobe Bryant. That discussion was followed by a joke about a drunk who mistook a foot doctor's office for a place that offers services of a sexual nature and by a parody commercial advertising a fictional product called "Head" shampoo. The dialogue went as follows:

**Gerry:** Kobe Bryant, boy is he thin now! He lost 25 lbs.

**Wicksie:** Did he really? Really?

**Gerry:** Mostly, uh, mostly wallet weight over the, over the summer... and, boy, I'll tell you, he just, eh, ooh doggy, he's in big trouble! They started talking about this whole thing yesterday and I guess he asked a girl to join him in the hot tub.

**Jodi:** Umm. Oh

**Wicksie:** Who is getting in the hot tub?!

**Jodi:** Hot in the hot tub, hot!

**Gerry:** She... she didn't want to do that. Then she lifted her dress to show him a tattoo she had on her ankle.

**Jodi:** Right.

**Gerry:** On the ankle. Well, it was a long dress.

**Jodi:** Why did she lift it up over her waist then?

**Wicksie:** Yeah, yeah, how high did the dress go?

**Gerry:** That led to some consensual kissing then Kobe tried to put his hand between her legs and she tried to leave. All right, each time she made a move to leave, Kobe blocked her but it's a basketball move.

**Jodi:** Hmm, it was just natural instinct.

**Gerry:** Hee, hee ... how many years in college did he have to do that?!

**Wicksie:** He was playing defence.

**Gerry:** He grabbed her by the neck with both hands, which is a foul, turned her around, bent her over the chair and raped her.

**Jodi:** Now, what's that?

**Wicksie:** Ooh, "allegedly".

**Gerry:** Oh, yeah, "allegedly", yeah.

**Wicksie:** Allegedly, allegedly.

**Gerry:** Then she cried "no, no, no". Actually it was "no, no", only twice (allegedly). The third no, she said she gave up. She said "Okay, go ahead" and did not want Kobe to hurt her anymore. So after the alleged rape, Kobe allowed the woman to turn around and he said "You're not going to tell anyone, are you?".

**Jodi:** Oof.

**Gerry:** And he said, "Kiss the manhood".

**Jodi:** Eewe. Oh.

**Wicksie:** Oh oh.

**Jodi:** Oh.

**Gerry:** Yeah, and he told her to go to the bathroom, allegedly, and clean herself up.

**Wicksie:** Pretty graphic details that went into yesterday.

**Jodi:** Yup.

**Gerry:** Yeah, blood stains on Kobe's shirt too.

**Wicksie:** Ooh!

**Gerry:** And then, I guess, one of the Kobe's attorneys tried to say it could've been from the result of having sex with three different women and three different days, and then the judge pretty much grabbed her by

the throat...

**Jodi:** Oh, my goodness!

**Gerry:** And said "Don't you say stuff like that" and dragged her off into the room. So this is going to be an ugly one and I do think ole Kobe may go to jail.

**Wicksie:** He could be in big trouble for this one.

**Gerry:** Boy, oh boy, all right, let's head out to Crossfield.

(In the background) Here's Phil MacCrackin

**Gerry:** It's Phil MacCrackin day. What's going on, Phil?

**Phil:** Not too much. Could you imagine being in prison with Kobe?

**Gerry:** Oh, boy.

**Phil:** Now, how can you reach up there?

**Jodi:** Ah.

**Gerry:** Honestly, it'd be tough.

**Phil:** You'd have to ask the guards for some kind of a short ladder.

**Wicksie:** Ha, ha, ha

**Jodi:** Oh, Phil.

**Phil:** When you see his eyes getting as big as sausages, you kick the ladder out from under.

**Jodi:** Phil!

**Phil:** Ha, ha, here....this is a cute little story Gerry. A guy is in the bar. He's having a few drinks. Of course, like most of men after about a dozen or two, he's ready for a woman, right?....He says to the bartender "I need a woman". The bartender says, "You know what? I know a place not too far from here" and gives him directions. Of course, the drunk takes off and he gets lost, right, he ends up at a foot doctor.

**Jodi:** Hmm.

**Phil:** Walks in and the lady says, "Can I help you?" He says, "Yeah, I want some service." She says "Just go into this room over here and", she says, "just put her up on the table." So he goes in there, drops his drawers and puts his manlihood [*sic*] down there and the nurse comes in and she looks and she says "That's not a foot!" He says, "Give it a minute sweetheart, give it a minute."

**Gerry and friends:** Ha ha ha

**Gerry:** Shanana shanana, go to hell, shanana shananana, go to hell

(repeated several times).

**Gerry:** Hey, Wicksie.

**Wicksie:** What?

**Gerry:** Look at how nice Jodi's hair is today.

**Wicksie:** It has a nice sheen to it again.

**Gerry:** Can I just... Boy, that smells good!

**Jodi:** Thank you.

**Wicksie:** What does that smell like?

**Gerry:** Are you using "Head and Shoulders"?

**Jodi:** No, no, it's a new shampoo.

**Gerry:** Oh!

Mock advertisement:

**Chip:** Hi, Felicia. Gee, I love your dress and your hair looks so shiny and manageable! Are you still shampooing with "Head and Shoulders"?

**Felicia:** Gosh, Chip, I stopped using "Head and Shoulders" a long time ago. I mean, honestly. Who grows hair on their shoulders anyway?!

**Chip:** Hee hee. Yeah, right. So what are you using now?

**Felicia:** Well, it's like "Head and Shoulders" only without all those additives. It's just called "Head". Let's tell him about it, girls!

**Girls singing:** If you're tired of your old shampoo  
Yeah, yeah  
Frustrated and feeling blue  
Yeah, yeah  
Just remember what I said  
Yeah, yeah  
You'll feel better if you get some "Head"

A listener complained to the CRTC on October 14 and his letter was forwarded to the CBSC in due course. He said in part (the full text of all correspondence can be found in the Appendix):

Over the course of a very few minutes I heard the following:

1. A graphic description of the rape details in the Kobe Bryant rape case.

A perverted sketch involving a woman who had given up "Head and Shoulders" shampoo for "Head" Shampoo.

A sick joke about a man who mistook a foot doctor's office for a house of

prostitution and an examination made of his penis.

Unfortunately my children had earlier reprogrammed the radio to 92.1 FM.

[...]

The programming on October 10, 2003 appears to have breached any bounds of common decency.

The broadcaster's Vice President and General Manager responded on November 3. He said in part:

I have listened to the programming in question and found that the "graphic description of the Kobe Bryant rape case" was just that, graphic description. The same factual information was made available to the public through various media outlets, including news papers, television and on the Internet. Your items #2 and #3 are double entendre jokes that are only meant as humour for our audience.

CJAY FM is a rock radio station targeting and delivering an adult audience of men between the age of 18 and 49 years of age. Due to the nature of the format and our audience, humour can be found to be a main ingredient of the radio station. I'm sure that you can understand that humour of any kind is a very subjective issue. What one person finds funny another may not.

[...]

I do not agree that the above-mentioned programming has "breached any bounds of common decency". As a member in good standing of the Canadian Broadcast Standards Council, CJAY is committed to broadcast programming of the highest quality.

The complainant was not satisfied with the response and filed a Ruling Request on November 13.

## **THE DECISION**

The CBSC's Prairie Regional Panel considered the complaint under the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the *CAB Violence Code*, the relevant provisions of which read as follows:

### *CAB Code of Ethics - Clause 9 (Radio Broadcasting)*

Recognizing that radio is a local medium and, consequently, reflective of local community standards, programming broadcast on a local station shall take into consideration the generally recognized access to programming content available in the market, the demographic composition of the station's audience, and the station's format. Within this context., particular care shall be taken by the radio broadcasters to ensure that programming on their stations does not contain:

[...]

(b) Unduly sexually explicit material; [...]

### *CAB Violence Code, Article 7.2 (Violence against women)*

7.1 Broadcasters shall not telecast programming which sanctions, promotes or glamorizes any aspect of violence against women.

7.2 Broadcasters shall ensure that women are not depicted as victims of violence unless the violence is integral to the story being told. Broadcasters shall be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

The Prairie Regional Panel Adjudicators reviewed all of the correspondence as well as a recording of the challenged broadcast. The Panel finds that the CJAY-FM broadcast in question constituted unduly sexually explicit description, in violation of Clause 9 of the *CAB Code of Ethics*.

### **The Joke and the Parody**

The Panel considers that both the joke and the parody were quite subtle in nature and were not at all explicit, not even, in fact, on the cusp of explicitness. They were, in the Panel's view, quite similar in nature to the tune and parody advertisement this Panel had reviewed in *CJAY-FM re Forbes and Friends (joke songs and parody advertisement)* (CBSC Decision 02/03-0674, December 15, 2003). Having found one joke song unduly sexually explicit, the Panel found the other two challenged bits not in breach of Clause 9 of the *Code of Ethics*. The Panel put the matter in the following terms:

The parody commercial for the Wiener Wizard is, in the view of the Panel, entirely dependent on an understanding of the double entendre at play. It falls squarely into the category of innuendo and there is nothing on the face of the parody that would even suggest a sexual component to the utterly un instructed. Such humour is not in breach of Clause 9(b) of the *CAB Code of Ethics*. The third item, the joke song that refers to the "enormous penis" is closer to the edge. To the extent that it only refers to a body part, however, it falls within the ambit of previous CBSC decisions dealing with "Trophy Wife Barbie", on the one hand, and the song "Tits", on the other. In the decision that dealt with both, *CIRK-FM re K-Rock Morning Show* (CBSC Decision 01/02-0713 & -1113, February 5, 2003), this Panel said, as quoted above, that the segments are in poor taste but do not rise to the level of a breach of the *CAB Code of Ethics*."

In that same decision, the Panel also concluded that a sex advice segment discussing penis shape was not in breach of the Code since, although it described anatomy, it did not describe a sexual act. Similarly, with respect to the songs "Tits" and "Circumcision", the Panel said that

both women and men are targets for the program's jokes. For example, the "Tits" song, which tells the story of a man who buys his wife breast implants only to be unsettled by the fact that she shows the result to everybody, was preceded an hour earlier by a joke song called "Circumcision", which told the equally

ridiculous story of a man who satisfied his fiancée's request for him to be circumcised by going to a barber "for a little off the top" and ended up with a significant diminution of a material part of his anatomy.

Neither song was found to be sexually explicit. The suggestion of a swollen member here is, of course, closer to the sense of sexual activity but the thrust of the song is not clearly that. While the question of bad taste is certainly present, the Panel is constrained to reiterate the CBSC's position that taste alone is a matter for the on/off switch or the change of station dial. The discussion of penis size is not in and of itself sufficiently unequivocally a sexual matter that it can be said to be in breach of the Code. It is sufficiently on the cusp that it must be protected by the underlying principle of freedom of expression. The Panel does not find a breach of Clause 9(b) with respect to this segment.

In the matter at hand, the Panel finds nothing more than innuendo. At most, the issue is one of taste and that must be left to the audience in the radio marketplace to assess.

### **The Kobe Bryant Story**

In the recounting of the Kobe Bryant story, much banter relates to questions of the nature of what occurred between Bryant and the accuser. According to public reports, some of the banter pokes fun at Bryant, who has admitted to a certain level of sexual activities with the accuser and some pokes fun at the accuser herself, who may have manifested some consent in the activities. The Prairie Panel is certainly not in any position to comment on any of the allegations of fact. Moreover, it has insufficient information on which to even be aware of the details of events, much less to comment on any aspect of the charges and counter-charges. The issue for the Prairie Panel is limited to whether the segment, first, was too explicit for morning radio or, second, sanctions, promotes or glamorizes any aspect of violence against women.

### **Explicitness**

With respect to the first issue, the *Shorter Oxford English Dictionary* defines the aspect of "explicit" that is material to the Panel as "distinctly expressing all that is meant; leaving nothing merely implied or suggested; unambiguous; clear." While there can be no doubt that the use of the verb "rape" alone could be understood as clear and unambiguous, it is not in this sense that the Panel understands the codifiers' intention in using the term "explicit". The Panel considers that the codifiers meant explicit in the sense of graphic, full, expressing all that is meant, which is to say more than the isolated verb could convey. Indeed, it would make little sense for the use of a solitary verb, however unequivocal, to fall into the "explicit" category. What was intended was the unnecessary and excessive building upon that foundation, the "unduly explicit" description of, in this case, sexual activity.

In applying that understanding to the words “He grabbed her by the neck with both hands, which is a foul, turned her around, bent her over the chair and raped her,” the Panel considers that the broadcaster has been “unduly sexually explicit”. Had the host limited his observation to the fact that Bryant had raped the accuser, that would almost certainly have presented no problem. He chose, however, to convert the rape (if rape there was – this matter is still before the Courts as of the date of this decision) into a four-step event, which exceeded the bounds of Clause 9 of the *CAB Code of Ethics*.

### **Violence against Women**

Although the provision relating to violence against women falls under the (*Television*) *Violence Code*, the Panel approaches the applicability of the principles enunciated therein as it did in *CIOX-FM re a song entitled “Boyz in the Hood”* (CBSC Decision 00/99-0619, October 12, 2000). In that decision, the Ontario Regional Panel determined that radio content, including songs, is just as subject to the *CAB Violence Code* as the television content for which it was initially devised:

While it is clear that the prohibition against sanctioning, promoting or glamorizing any aspect of violence against women is found in the Code dealing with violence *on television*, the Council does not assume that Canada’s private broadcasters had intended their strong and unequivocal prohibition of such aggressively anti-woman behaviour to extend no further than the television screen. The Council considers that, while the *Violence Code* was created to deal with a series of content issues far likelier to be present in that medium than in the different style of programming in the radio sphere, the broadcasters did not believe that the prohibitory principle ought not to benefit women across the broadcast spectrum. Moreover, the Council understands that the freedom of persons from *abusive* or discriminatory comment based on their gender in the human rights provision of the *Code of Ethics* would include an entitlement to be free from the promotion of physical violence in either medium. Moreover, the recognition of the dangers of “stereotyping images” and the mandating of “conscious sensitivity to the problems related to sex-role stereotyping, by refraining from exploitation” in Clause 15 of the medium-neutral *Code of Ethics* would equally intend to provide such protection from physical abusive language content.

In applying Article 7 of the *Violence Code* to the matter at hand, namely, the issue of the glorification or glamorization of violence against women, the Panel finds that there is no Code breach. There were attempts at humour but none at the sanctioning of violence against women. The humour was itself predicated on questions of consent and the facts giving rise to any doubts in this regard (on the basis of public reports) but there was none with respect to any aspect of violence against women.



## Repetitive Breaches

This is not the first occasion on which CJAY-FM has breached the provision of Clause 9 of the *CAB Code of Ethics*, which prohibits unduly sexually explicit comments on the radio. In *CJAY-FM re a Sports Report* (CBSC Decision 02/03-0234, February 5, 2003), this Panel said that it was

also of the view that the analogy is too sexually explicit for the time of day at which the report was broadcast, namely, 7:20 am. In another decision taken this same date, the Panel addressed a very different aspect of the issue of sexual content on morning radio. Citing a number of previous decisions relating to similar material, this Panel concluded that certain comments which could be considered sexually explicit were inappropriate during daytime radio in *CIRK-FM re K-Rock Morning Show* (CBSC Decision 01/02-0713 & -1113, February 5, 2003). In arriving at this determination, one segment considered was a comedic song entitled "Prison Bitch". Although the majority of the lyrics consisted of innuendo alluding to forced sexual activity, there were certain words in the song that made its meaning clear. In the CJAY-FM case, on the other hand, there was no attempt to mask the sexual meaning with double entendres or innuendo. The sexual reference was obvious and would likely have been widely understood by the majority of the station's listeners.

Then, in *CJAY-FM re Forbes and Friends (joke songs and parody advertisement)* (CBSC Decision 02/03-0674, December 15, 2003), this Panel also found that a segment on the very same program that is challenged in the present matter exceeded the bounds of Clause 9 of the *CAB Code of Ethics*.

It would be fair to observe, in general terms, that there may come a point in descriptive commentary when the accumulation of individual metaphors, any one of which might be sufficiently subtle to be excusable, becomes obvious and inexcusable. At that point, the body of subtleties loses any characterization as forgivable innuendo and crosses the line into sexual explicitness. That is the case with "My Ex-boyfriend", which, line-by-line, finds a different metaphorical treatment for sexual acts, principally of the anal variety. Heard, or read, cumulatively, they are, without doubt, explicit. They are, moreover, *unduly* explicit and, as such, in breach of Clause 9(b) of the *CAB Code of Ethics*.

The present matter is thus the third example of the broadcaster's disregard for the same provision of the *CAB Code of Ethics*. It has historically been unusual for the CBSC to face repetitive Code breaches by the same broadcaster; on the few occasions on which it has occurred, the CBSC has dealt with the issue of repetitive breaches in the following way.

The first of these was discussed at length in *CILQ-FM re the Howard Stern Show* (CBSC Decision 97/98-0487, 488, 504 and 535, February 20, 1998) and the second involved *Télévision Quatre Saisons*. As the result of these decisions, the CBSC modified its *Manual* to ensure that the obligations of its members were clear. The *Manual* now provides:

Broadcaster members which join the CBSC do so voluntarily and, by so doing, agree to:

[...]

b) avoid the recurrence of any breach of the Codes which has previously been decided against them with respect to a particular program or series;

Members even agree to ensure that the principles established in a decision rendered against *another* broadcaster will be respected by them in their own programming decisions. The undertaking is framed as follows:

Broadcaster members which join the CBSC do so voluntarily and, by so doing, agree to:

[...]

c) respect the conclusions of any CBSC decision which applies to any program or series they are running, even if that decision was rendered in response to a complaint directed at another station or stations running that same programming;

There was recently another instance in which a CBSC Panel faced a case of repeated Code breaches by a broadcaster, namely, *Showcase Television re the movie Frankie Starlight* (CBSC Decision 02/03-0682, January 30, 2004). In that decision, the National Specialty Services Panel established the following requirement to deal with the specific concerns it faced with respect to that broadcaster:

[T]he Panel concludes that Showcase Television must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to: a) avoid the recurrence of the broadcasting of coarse or offensive language prior to the Watershed; and b) ensure that it will include viewer advisories with the required form and frequency in its programming. Failing the receipt of that written assurance of the steps Showcase plans to take, the CBSC will determine whether there is any reason for which Showcase Television should be entitled to remain a member of the CBSC benefiting from the operation of the self-regulatory mechanism.

It should be noted that, within the agreed delays, Showcase Television undertook concrete measures to ensure future compliance and presented the CBSC with a commitment in the form of an extensive and detailed plan to ensure the avoidance of any slip-ups in the problematic areas in the future.

In the present circumstances, the Prairie Regional Panel concludes that corresponding requirements must be established for CJAY-FM. Consequently, in the present matter, the Panel concludes that CJAY-FM must, within the thirty days following its receipt of the text of this decision, provide the CBSC with concrete indications of the measures which it intends to put in place in order to ensure that programming on its station does not contain unduly sexually explicit material. Failing the receipt of that written assurance of the steps CJAY-FM

plans to take and the satisfactory timing of their implementation, the CBSC will determine whether there is any reason for which CJAY-FM should be entitled to remain a member of the CBSC benefiting from the operation of the self-regulatory mechanism.

### **Broadcaster Responsiveness**

Since one of the responsibilities of membership in the CBSC is, according to the *CBSC Manual*, to “co-operate fully with complainants by responding quickly and effectively to their concerns,” CBSC Panels always take the time, in the course of their deliberations, to review the broadcaster’s responsiveness to the complainant. Compliance with this undertaking is a matter required in all files under consideration by the CBSC’s Panels. The Vice President and General Manager’s letter constitutes an acceptable response. Nothing more is required in this instance.

### **CONTENT OF THE ANNOUNCEMENT OF THE DECISION**

CJAY-FM is required to: 1) announce this decision, in the following terms, once during prime time within three days following the release of this decision and once more within seven days following the release of this decision during the time period in which the morning show *Forbes and Friends* is broadcast; 2) within fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the announcements to the complainant who filed the Ruling Request; and 3) at that time, to provide the CBSC with that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CJAY-FM.

The Canadian Broadcast Standards Council has found that CJAY-FM has breached Clause 9 of the Canadian Association of Broadcasters’ *Code of Ethics* which prohibits the broadcast of inappropriate sexual content. During its episode of *Forbes and Friends* of October 10, 2003, CJAY-FM broadcast a segment which contained a detailed discussion of a current rape case, which was unduly sexually explicit and breached the provision of the Code which requires that particular care shall be taken by radio broadcasters to ensure that programming on their stations does not contain unduly sexually explicit material.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council.*

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**Appendix To  
CJAY-FM re Forbes and Friends (graphic discussion)(CBSC Decision 03/04-0157,  
April 16, 2004)**

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## **I. The Complaint**

The following complaint dated October 14, 2003 was sent to the CRTC and forwarded to the CBSC in due course:

I would like to register a complaint in relation to the CJAY 92.1 FM Calgary programming the morning of October 10, 2003.

Over the course of a very few minutes I heard the following:

1. A graphic description of the rape details in the Kobe Bryant rape case.
2. A perverted sketch involving a woman who had given up "Head and Shoulders" shampoo for "Head" Shampoo.
3. A sick joke about a man who mistook a foot doctor's office for a house of prostitution and an examination made of his penis.

Unfortunately my children had earlier reprogrammed the radio to 92.1 FM.

In my extremely brief encounters with this station in the past I have typically been disgusted with their programming.

The programming on October 10, 2003 appears to have breached any bounds of common decency.

Sincerely,  
*Signed*

## **II. The Broadcaster's Response**

The broadcaster responded to the complainant's letter on November 3, 2003 with the following:

Dear Mr. [...],

The purpose of this letter is to respond to your letter that I received from the Canadian Broadcast Standards Council on October 17, 2003.

I am sorry that you have been "disgusted with the programming heard on CJAY FM in your brief encounters with the station". It is certainly not our intention to do that to any of our listeners. I have listened to the programming in question and found that the "graphic description of the Kobe Bryant rape case" was just that, graphic description. The same factual information was made available to the public through various media outlets, including

news papers, television and on the Internet. Your items #2 and #3 are double entendre jokes that are only meant as humour for our audience.

CJAY FM is a rock radio station targeting and delivering an adult audience of men between the age of 18 and 49 years of age. Due to the nature of the format and our audience, humour can be found to be a main ingredient of the radio station. I'm sure that you can understand that humour of any kind is a very subjective issue. What one person finds funny another may not.

You can often see the subjectivity of humour in many popular television programs aired weekly on our local networks, such as the Simpson's, Sex In The City, Saturday Night Live or The Just For Laughs Comedy Show carried by CBC.

I do not agree that the above-mentioned programming has "breached any bounds of common decency". As a member in good standing of the Canadian Broadcast Standards Council, CJAY is committed to broadcast programming of the highest quality.

I hope this addresses your concern, and I would like to thank you for listening to CJAY. Letters from listeners like you will only help us to be a better radio station. Should you wish to discuss this matter any further, please feel free to contact me directly at [...].

## **II. Additional Correspondence**

The complainant was unsatisfied with the broadcaster's response and sent a signed Ruling Request Form dated November 10, 2003 which he faxed to CBSC on November 13.

On April 1, an additional fax was sent on behalf of the complainant stating the following:

PLEASE NOTE THAT WE HAVE NOT HAD A RESPONSE TO THE ATTACHED COMPLAINT THAT WE FAXED TO YOU ON NOVEMBER 13, 2003.

WE LOOK FORWARD TO YOUR PROMPT ATTENTION TO THIS MATTER.

THANK YOU