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**CANADIAN BROADCAST STANDARDS COUNCIL  
NATIONAL SPECIALTY SERVICES PANEL**

Space: TheImaginationStation re Drive-In Classics Promo  
(CBSC Decision 01/02-0699)

Decided September 13, 2002

R. Cohen (Chair), R. Cugini, E. Duffy-MacLean, M. Hogarth,  
H. Pawley

Since S. Crawford, who customarily sits on this Panel, is employed by the corporate group that owns Space: TheImaginationStation, she did not participate in this adjudication.

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**THE FACTS**

During the broadcast of an episode of the series *The X-Files* on March 25, 2002 at approximately 11:05 pm (8:05 pm in the complainant's time zone), the specialty service Space: TheImaginationStation broadcast a promotional spot for its affiliated specialty service Drive-In Classics. It promoted the 1968 motion picture *Vixen*, directed by Russ Meyer, by the use of video clips from the film. These reflected the sexual orientation of the film and included scenes of sexual activity between Vixen Palmer, the woman protagonist, and various individuals, including visitors to the bush camp run by the woman and her husband, both male and female, as well as the woman's brother. Some of these scenes showed Vixen in lingerie or various states of undress and, between the movie clips, various words and phrases flashed on the screen, including "banned in Ohio", "outrageous", "controversial", "incestual" [sic] and "Russ Meyer's most successful film". The promo concluded with an appeal to viewers to subscribe to the new Drive-In Classics channel.

In the complainant's e-mail of March 30 to the CRTC (forwarded to the CBSC in due course), she explained that she had been watching *The X-Files* on Space for some time and had seen numerous promotional spots. (The full text of this e-mail and all other correspondence related to this matter can be found in the Appendix.)

Most of the advertising for Drive-In Classics, during this time frame, has been of a sexual nature, usually concerning itself with a lot of overflowing breast shots.

She noted that she had contacted Space directly on March 26 and that, although she had

had no reply from them, she was aware of “a marked difference in the type of advertising they have been running during the 8-9 pm time slot of *The X-Files*.” She put her complaint about the promo of March 25 in the following terms:

I don't believe Space TV has any type of standard to govern themselves if they would air such a commercial. At no time is incest a content for broadcasting, however I find it even more disturbing because of the age group watching tv at this time.

She sent a follow-up e-mail on April 2, in which she explained:

In re-reading my letter of complaint I don't know if I made clear that the incest content of the advertisement was NOT about a movie showing the wrongness of incest. On the contrary, it was used as a sexual lure to a movie which was completely concerned with sex.

She re-emphasized the point in an e-mail to the CBSC on April 25, saying that “incest was used to SELL a tv movie, a movie that portrayed incest as acceptable sex.” The broadcaster's Director of Programming and Acquisitions responded on May 9. Her reply was, simply stated, apologetic:

After reviewing the piece in question, I must say that we completely agree with your position. The ad for Vixen has been withdrawn from all our stations as we agree with you that it was in questionable taste and should not have made it to air.

As a result of your complaint we have also reviewed our procedures for approving Drive-In Classics promotional spots for content and appropriateness, prior to their being scheduled on Space, so that this situation does not re-occur.

The complainant wrote back to the broadcaster on May 15. It was clear that she appreciated the value of the dialogue between the broadcaster and the complainant; however, she did not agree with one aspect of the Director of Programming's response:

Incest as an acceptable sexual practice for entertainment purposes is not “questionable taste”; it is unethical broadcasting and against the law. Anyone reviewing the promo spot in question can see that. None of this has caused me embarrassment, only deep frustrated concern that something like this could be broadcast on a Canadian television station. I made the assumption that laws and codes of ethics were in place to regulate your industry. Or just as important that CHUM Limited would have standards of ethical broadcasting.

On May 17, she filed her Ruling Request, which triggered the CBSC's adjudication process.

## **THE DECISION**

The National Specialty Services Panel considered the complaint under the following provision of the Canadian Association of Broadcasters' (CAB) *Voluntary Code Regarding Violence in Television Programming*:

*CAB Violence Code*, Article 3 (Scheduling):

3.1 Programming

3.1.1 Programming which contains scenes of violence intended for adult audiences shall not be telecast before the late evening viewing period, defined as 9 pm to 6 am.

[...]

(Note: To accommodate the reality of time zone differences, and Canadian distant signal importation, these guidelines shall be applied to the time zone in which the signal originates.)

3.2 Promotional material which contains scenes of violence intended for adult audiences shall not be telecast before 9 pm.

The National Panel Adjudicators viewed a tape of the promo in question and reviewed all of the correspondence. The Panel considers that Space is in violation of the *CAB Violence Code* as the result of its broadcast of this spot in a pre-Watershed time period, even though it aired post-Watershed in the province of origin.

### **Incest: Adult Content**

Of all the areas of sexual activity, it would be difficult to name one that is more problematic to broadcast in a time period when children could be expected to be watching television than incest. It is both overtly sexual (and oriented exclusively toward adults in that sense) and disquieting, threatening and destabilizing for children. Whether there *may* be some carefully written and presented documentary or educational treatment of the subject that *could* be broadcast before the Watershed is not the issue for this Panel currently. Its concern is the strictly commercial and, to use the complainant's term, *luring* purpose of the promo. The spot is clearly adult fare.

### **The Watershed and Promotional Spots**

The CBSC has dealt with the Watershed on many occasions. Its Panels have made it clear that programming containing any material intended exclusively for adult audiences must be broadcast after the Watershed hour of 9:00 pm. Its Panels have also refined many of the principles related to the Watershed. Thus, for example, in *Bravo! re the film The House of the Spirits* (CBSC Decision 00/01-0738, Decided January 16, 2002), this Panel determined that programming that straddles the Watershed hour, *i.e.* that begins before 9:00 pm but runs after that hour, must respect the rules applicable to programming that begins and ends pre-Watershed, that is, prior to the late evening hour. So, too, in *History Television re the documentary film "Argentina's Dirty War"* (CBSC Decision 00/01-0944, May 3, 2002), this Panel established the principle that broadcasters "will be expected

to include viewer advisories coming out of every commercial break for any programs which begin prior to the Watershed in *any* time zone in the event that their content is unsuitable for children, in accordance with the rule established in Article 5.2 of the *Violence Code*.”

This is the first occasion on which a CBSC Panel is called upon to deal with the combined issue of the broadcast of promotional material or an advertisement containing material intended for adults, on the one hand, and the Watershed exception that applies to compliance in the originating time zone. To some extent, this issue was anticipated in the above-noted History Television decision, in which this Panel decided

that the exemption relating to the originating time zone in Article 3 is *exceptional* and applies only to the scheduling issue. It is not present in any other article of the Code and has no application to the question of the requirements for the inclusion of advisories established in Article 5 of the *Violence Code*.

The foregoing being said, this Panel considers that the exceptional nature of the time zone exemption is determinative in the present case. The placement of the exemption at the end of Article 3.1 of the *CAB Violence Code* makes it clear that the principle applies only to programming. The Panel finds no reasonable basis for concluding that it can be interpreted as applying to either of the numbered paragraphs that deal with promotional material and advertisements *but* which *follow* the exemption. Apart from anything else, such short spots do not, indeed, cannot by their nature, benefit from the informational protections afforded by classification icons and viewer advisories. Broadcasters must, therefore, in the view of the Panel, ensure that promotional spots and advertising conform to the Watershed requirements of the private broadcaster codes, as a function of the *hour at which they will be received* in any time zone in the country, without regard to the hour at which they are broadcast in the time zone of origin.

In the result, the Panel considers that the broadcast by Space: TheImaginationStation of the promo for the film *Vixen* on Drive-In Classics is in breach of Article 3.2 of the *CAB Violence Code*.

### **Broadcaster Responsiveness**

As is widely known and appreciated by Canada’s private broadcasters, the CBSC considers the dialogue between the broadcaster and the complainant an integral part of the process of dealing with public complaints. In the present matter, it even appeared that the initial skepticism of the complainant was assuaged by the candour of the broadcaster’s response. In fact, the Panel considers that the broadcaster’s reply was as forthright as could be hoped for. It constituted an acknowledgment of error, a commitment to the withdrawal of the offending spot and a review of broadcaster practices with respect to the approval of promo spots for Drive-In Classics. The Panel does not consider that the broadcaster could have done more. There is no breach of the standard of responsiveness on this occasion.

## **ANNOUNCEMENT OF THE DECISION**

Space: TheImaginationStation 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 offending Drive-In Classics promo was broadcast; 2) within the fourteen days following the broadcast of the announcements, to provide written confirmation of the airing of the statement 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 Space: TheImaginationStation.

The Canadian Broadcast Standards Council has found that Space: TheImaginationStation breached provisions of the Canadian Association of Broadcaster's *Violence Code* in its broadcast of a promotional spot for Drive-In Classics on March 25, 2002. The spot contained video clips of scenes from the film *Vixen* which included sexual content, among other things referring to incest, that was intended for adult audiences. By broadcasting that promotional spot before the Watershed hour of 9:00 pm in the Pacific time zone, Space: TheImaginationStation breached the Watershed requirement set out in Clause 3.2 of the *CAB Violence Code*.

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

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## APPENDIX

### CBSC File 01/02-0699

#### Space: TheImaginationStation re Drive-In Classics Promo

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#### I. The Complaint

The following complaint dated March 30, 2002 was sent to the CRTC and forwarded to the CBSC in due course:

My complaint is of a serious nature regarding advertising by Space TV, which is Channel 45 in Greater Vancouver, BC.

On Monday evening, March 25, while watching *The X-Files*, which airs between 8-9pm Pacific time, I viewed an advertisement at around 8:05-8:10pm that included incest as its content. The ad was for "Drive-In Classics". It was promoting a movie which included "incestious" [*sic*] as one of its headlines and depicted 2 visual situations where a naked woman was lying down messaging her breasts and saying "come here little brother". The other was of a man talking to someone unseen about sex with his little sister. There was more content of this nature in the movie advertisement, but unfortunately I cannot accurately recall the exact words.

Space TV has been running ads for Drive-In Classics for some time, that I have seen, during the 8-9pm time slot while watching *The X-Files*. Most of the advertising for Drive-In Classics, during this time frame, has been of a sexual nature, usually concerning itself with a lot of overflowing breast shots.

I e-mailed Space TV's advertising department on March 26 and stated the same information as I have listed above and asked for a response to this type of material they were broadcasting. To date I have not received any response. Since sending my e-mail I have noticed a marked difference in the type of advertising they have been running during the 8-9pm time slot of *The X-Files*.

I don't believe Space TV has any type of standard to govern themselves if they would air such a commercial. At no time is incest a content for broadcasting, however I find it even more disturbing because of the age group watching tv at this time.

I hope that you will be able to do something about this. Thank you.

On April 2, the complainant sent the following brief letter of explanantion:

In re-reading my letter of complaint I don't know if I made clear that the incest content of the advertisement was NOT about a movie showing the wrongness of incest. On the contrary, it was used as a sexual lure to a movie which was completely concerned with sex.

After receiving the CBSC's initial response letter describing the CBSC process, the complainant sent the following e-mail on April 25:

Thank you for your e-mail dated April 24/02. I appreciate the information provided to me concerning the mandate and process of the CBSC. However, I must disagree with your point that dialogue between a complainant and a broadcaster could resolve a complaint of this nature. Considering that CHUM Limited owns both SPACE and DRIVE-IN CLASSICS, there is a serious conflict of interest. Further my complaint is of such a serious nature, incest as an acceptable sexual activity, I find it very difficult to understand that there is not more outrage within the broadcasting industry about this and how something of this nature is allowed to be broadcast.

[CBSC Correspondence Officer] I realise you don't know me or anything about me. Who I am or what my agenda may be. I can only say to you that I am deeply concerned about what I viewed on television that evening. That incest was used to SELL a tv movie, a movie that portrayed incest as acceptable sex.

I am one individual, a business woman. CHUM Limited is a large company, I do not have much chance to make a difference in their business practices. The only chance I have is to speak out. I can tell you now that I wish to pursue this further.

## **II. Broadcaster Response**

The Director of Programming and Acquisitions for both Space and Drive-In Classics responded to the complainant on May 9:

I am responding to your complaint regarding the advertisement for the Drive-In Classics Channel during the telecast of *The X-Files* on Space on Monday March 25. I am sorry that there was no response to your earlier e-mail to us, but as we do not have a specific advertising department, unfortunately it never reached me.

Thank you for bringing your concern about the particular Drive-In promotional spot on Space to our attention.

After reviewing the piece in question, I must say that we completely agree with your position. The ad for *Vixen* has been withdrawn from all our stations as we agree with you that it was in questionable taste and should not have made it to air.

As a result of your complaint we have also reviewed our procedures for approving Drive-In Classics promotional spots for content and appropriateness, prior to their being scheduled on Space, so that this situation does not re-occur.

We apologize for any embarrassment the broadcast caused. Please be assured that we have taken your comments very seriously.

Thank you again for taking the time to share your concerns. We appreciate hearing directly from our viewers, as we strive to improve our services.

### III. Additional Correspondence

The complainant sent a response to the broadcaster's letter on May 15 (and copied the CBSC):

Your response to my concerns, thanks to the CBSC and [its Correspondence Officer] especially, is appreciated, thank you. As has been brought to my attention, dialogue between broadcaster and viewer is important, however without the help of other people I would not have been able to bring this serious matter to your attention. Perhaps a review of how you handle viewer complaints would be of help to the public. Most probably there are other viewer complaints which have not crossed your desk.

Incest as an acceptable sexual practice for entertainment purposes is not "questionable taste"; it is unethical broadcasting and against the law. Anyone reviewing the promo spot in question can see that. None of this has caused me embarrassment, only deep frustrated concern that something like this could be broadcast on a Canadian television station. I made the assumption that laws and codes of ethics were in place to regulate your industry. Or just as important that CHUM Limited would have standards of ethical broadcasting. You have a large base of important advertisers who would not want to be associated with such programming.

I truly hope that you put into practice a procedure for reviewing content and appropriateness of your programs, not only the promo spots on Space for Drive-In Classics which you outline in your e-mail.

There are advocacy groups for ethical broadcasting which are aware of this case. I have forwarded your name and e-mail address as the person to contact regarding their concerns.

The complainant requested on May 17 that the issue be pursued by the CBSC.