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**CANADIAN BROADCAST STANDARDS COUNCIL**

**NATIONAL SPECIALTY SERVICES PANEL**

**YTV re a promo for the *Naked Brothers Band***

(CBSC Decision 07/08-1173)

Decided October 22, 2008

R. Cohen (Chair), S. Crawford (Vice-Chair), A. Cardozo, J. Medline, P. O'Neill,

G. Phelan (*ad hoc*)

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**THE FACTS**

The *Naked Brothers Band* is a scripted program about real-life brothers Nat and Alex Wolff (12-years old and 9-years old, respectively) who formed their own pop musical group called the Naked Brothers Band. Nat is the lead singer and songwriter, while Alex is the drummer. The series follows the two brothers and their bandmates as they pursue their musical career and deal with the trials and tribulations of being pre-teens. There are occasional arguments and physical scuffles among the band members, particularly between siblings Nat and Alex. The Panel expects that the target audience for the program is likely children in the same age range as the main characters.

A 15-second promotional spot for *Naked Brothers Band* aired on specialty service YTV during an episode of the cartoon *SpongeBob SquarePants* on January 27, 2008. The episode of *SpongeBob SquarePants* was rated "G" and the Panel expects that it would likely attract a audience age group similar to that for the *Naked Brothers Band*. The promo aired at 11:02 am Mountain Time (the complainant's time zone). A description of the visual components of the promo and the voice-over narration is as follows:

voice-over narration [man with Italian-sounding accent]: Hey, it's that guy from-a *Naked Brothers Band*.

Nat is standing in front of a chroma key green screen wearing a cowboy outfit.

voice-over: Oh look, a chicken.

Alex wearing chicken suit, but with a green hood over his head, walks in front of Nat and flaps his "wings". Brief scene of the other members of the Naked Brothers Band along with a few adults watching a television screen, pointing and laughing.

voice-over: Oh, I love-a the chicken.

Television screen showing Nat and Alex with city scene of skyscrapers superimposed behind them. Alex falls down and lands on the floor off-screen.

voice-over: Who does not love-a the chicken, heh?

Nat kicks the location where Alex has fallen and begins to walk out of the frame.

voice-over: Oh, I guess that guy no love the chicken.

Still photo of Nat and Alex playing instruments (and not in costumes) with an animated YTV background. On the right hand side are the words "The Naked Brothers Band, Monday 5:00 pm".

voice-over: *Naked Brothers Band*, Monday at five. In-a The Zone.

The CBSC received a complaint about the promo dated January 27, 2008. The complainant outlined his concerns as follows:

Shortly after 1100h MST on Sunday, 27 Jan 2008 on YTV (channel 14) after the introduction to the *SpongeBob SquarePants* show, YTV aired an advertisement for its show *Naked Brothers Band* that depicted a teenage male kicking a "chicken" character after the character had purportedly fallen down. I believe the depiction of this kind of violence on a channel devoted to youth programming is completely inappropriate. I think advertising of this nature (depicting violence on purportedly helpless individuals) should be banned from YTV (and indeed all television where children and youth may see it). I specifically want YTV and Corus Entertainment to apologize to myself [*sic*] and my seven-year-old granddaughter, and further to assure us that this kind of advertising will no longer appear on the station. The person or persons responsible for making that programming decision should be censured for their action, and the station executive should exercise more control over their staff.

YTV responded to the complainant on February 21:

We want to assure you that we take our responsibility as a broadcaster seriously and continually work to ensure that all of our programming complies with the regulations, codes and standards expected of us as a member of the CBSC, including the Canadian Association of Broadcasters' (CAB) *Voluntary Code Regarding Violence in Television Programming* (The Code). As primarily a children's network, we are acutely aware of our obligation to use particular caution in the depiction of any violence within our programming.

We are sorry you feel that the promotional material in question seems to encourage violent behaviour. Adhering to The Code, YTV will not air programming which contains gratuitous violence in any form. We will not air programming which we believe sanctions,

promotes or glamorizes violence. This on-air promotion is our tongue-in-cheek treatment of actual footage from the *Naked Brothers Band* series. In this documentary/mockumentary style program, cameras track real-life brothers Nat and Alex Wolff as they set out to conquer the music industry. As tweens themselves, they deal with issues that our audience can relate to such as girls, music, peer relationships and sibling rivalry.

Taking your concerns into consideration, we have re-evaluated this on-air promotion and stand behind our original decision to air it. At no point does this segment portray Nat's actions as brutality or suggest any intensity or aggression. In reality any implied physical impact doesn't actually take place on-screen. The result is simply a display of sibling frustration and it is not our intent to suggest that Nat is harming his brother in any way.

That being said, we do appreciate you taking the time to voice your opinion. At YTV, we welcome all feedback and believe that television watching should be a collaborative effort. It is encouraging to see that you are not only watching television with your granddaughter, but viewing it with a critical eye. Should you have any further inquiries regarding our programming, we encourage you to contact us directly at [info@ytv.com](mailto:info@ytv.com).

The complainant wrote back to YTV on that same date, indicating that he was "willing to reconsider [his] complaint in light of [YTV's] explanation", but that he would like YTV to send him a copy of the promo so that he could re-view it. The broadcaster apparently honoured that request, but the complainant remained dissatisfied and filed his Ruling Request on February 28 with the following letter:

The broadcaster (through [its] Vice President, Creative Director, Corus Television) sent a response to my original complaint, together with a copy of the 30-second commercial for my review. After carefully reviewing both her comments and the commercial, I find that TECHNICALLY she is correct in her assertion that "any implied physical impact doesn't actually take place on-screen." However, after having watched the segment several times, I find it difficult to believe that any rational viewer (including children) would not interpret what appears in the segment from 18 to 24 seconds to NOT depict violence. [The Vice President] states "At no point does this segment portray Nat's actions as brutality or suggest any intensity or aggression." There is no change in the point of view during the segment. The character takes action in the scene that can only be interpreted as kicking the "chicken" character as the kick is delivered to the location where the chicken character would be laying after falling (albeit off screen).

I do not agree with [the Vice President] that "At no point does this segment portray Nat's actions as brutality or suggest any intensity or aggression." I believe that the segment does indeed strongly suggest "aggression" and violence to an individual (the chicken character). I stand by my original complaint, and seek a formal apology from the broadcaster as originally requested, and an assurance that appropriate actions regarding censure of those responsible for airing the segment have been taken, and that such blatantly suggestive materials will not be aired in the future on YTV where no "viewer discretion" warning is provided.

## THE DECISION

The National Specialty Services Panel examined the complaint under various sub-articles of Article 2.0 (Children's Programming) of the Canadian Association of Broadcasters' (CAB) *Violence Code*. Note that that Code article defines "children" as "persons under 12 years of age".

2.1 As provided below, programming for children requires particular caution in the depiction of violence; very little violence, either physical, verbal or emotional shall be portrayed in children's programming.

2.2 In children's programming portrayed by real-life characters, violence shall only be portrayed when it is essential to the development of character and plot.

[...]

2.4 Programming for children shall deal carefully with themes which could threaten their sense of security, when portraying, for example; domestic conflict, the death of parents or close relatives, or the death or injury of their pets, street crime or the use of drugs.

2.5 Programming for children shall deal carefully with themes which could invite children to imitate acts which they see on screen, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or dangerous physical acts such as climbing apartment balconies or rooftops.

2.6 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred way, or the only method to resolve conflict between individuals.

2.7 Programming for children shall not contain realistic scenes of violence which minimize or gloss over the effects of violent acts. Any realistic depictions of violence shall portray, in human terms, the consequences of that violence to its victims and its perpetrators.

2.8 Programming for children shall not contain frightening or otherwise excessive special effects not required by the storyline.

The Panel Adjudicators read all of the correspondence and viewed a recording of the promo. The Panel concludes that the broadcast did not violate Article 2.0 of the *CAB Violence Code*.

### Too Violent for Children?

While the Panel understands the complainant's concern, it views the promo content differently than he. After all, the Panel's duty is one of measurement and balancing

societal interests. The CBSC must always weigh complaints and potential code breaches against the fundamental principle of freedom of expression. In other words, it is not every complainant concern that will be viewed as a breach of one of the codified standards administered by the CBSC. It is only those complaints that exceed the intangible threshold of acceptability. In the case of the standards applicable to the complaint at issue, the Panel has considered Article 2 of the *CAB Violence Code*. It considers, first of all, that the *Naked Brothers Band* program and promo fall within the age ambit envisaged by Article 2 of the Code. It also considers that the violence anticipated by the codifiers of that provision is of a fairly high order, say, severe rather than mild.

While it is true that the violence in Article 2.1 *can be* either “physical, verbal or emotional”, it is *physical* violence that is at issue here. And the words used in other sub-paragraphs of the article give a sense of the intensity of the violence that will fall under its terms. These include: threatening, death, street crime, dangerous, frightening, excessive, and realistic scenes or depictions of violence. The concern of the standards is with major, not minor, violence. And this is in keeping with the understanding of the word “violence” itself in the *Oxford English Dictionary*: “The exercise of physical force so as to inflict injury on, or cause damage to, persons or property; action or conduct characterized by this; treatment or usage tending to cause bodily injury or forcibly interfering with personal freedom.” Another of the *OED* meanings is: “Great force, severity, or vehemence; ... passion, fury.”

The Panel simply does not view the off-screen kicking of one brother dressed in a chicken suit by the other brother as sufficiently violent to constitute a breach of any prohibition included in Article 2 of the *Violence Code*. This is not to say that the Panel views the message flowing from, or reflected in, the brotherly kick as positive or friendly. It does not. It does understand, though, that siblings often scuffle. It fully appreciates that the best thing that could be said about the kick is that it was in bad taste and a lousy choice of what to air during a program aimed at under-12s, but the worst thing that could be said about it does not go so far as to breach the Code. Not one of the words or phrases cited in the previous paragraph could be said to apply: not threatening, dangerous, frightening, or excessive, much less death, or street crime. Nor does it consider that there was any intention to cause bodily injury.

Repeating the point made in the previous paragraph, the Panel would recommend that promos, which do not benefit from context, in the way that a full episode of, say, *Naked Brothers Band* might, avoid material that sets such a poor example for children. Such a broadcast forces parents to intervene to explain why such behaviour is inappropriate. While there is nothing bad about such intervention, the Panel does not consider it worthwhile or helpful to necessitate such involvement in the absence of a proper opportunity, such as a story with elements that would contextualize such behaviour. It should also be noted that there cannot be any expectation that the prohibition contained

in Article 2.2, namely, that “violence shall only be portrayed when it is essential to the development of character and plot” would apply in an instance such as that under consideration here. As the Prairie Regional Panel observed in *CKY-TV re Promos for “The Sopranos” and “City Hall”* (CBSC Decision 00/01-0071, August 20, 2001), Article 1.1 (which is structurally analogous to Article 2.2, the corresponding provision under consideration here) cannot apply, since the *development* of plot is

an eventuality which is inconsistent with a 30-second spot which, by its nature, cannot be expected to develop a plot or characters, if not also a theme. It is to be expected that a promo or an advertisement will be made up of extremely brief sequences interwoven not to tell a story but to sell a story (or a product or service).

Consequently, no element of the complained-of promo amounts to a breach of any provision of Article 2 of the *Violence Code*.

The Panel does agree with the broadcaster’s observation about the absence of brutality as well as either intensity or aggression, but it does not agree with the broadcaster’s conclusion that the promo escapes a breach of the Code because “any implied physical impact doesn’t actually take place on-screen.” While that helps to avoid any visible determination of a sufficient level of violence to attract a negative finding, it is hardly conclusive. A nasty intention or heightened level of aggression on Nat’s part could easily have tipped the balance. The Panel simply did not find those elements here, but it would not wish that YTV or other broadcasters consulting this decision would conclude that off-screen actions would alone sustain the non-relevance of any element of the *Violence Code* standards.

### **Broadcaster Responsiveness**

It is a fundamental step in the CBSC’s process that broadcasters must respond to complaints about their programming. While not required to agree with a complainant, broadcasters are expected to respond in a timely and thoughtful manner to those audience members who have taken the time to express their concerns. In the matter at hand, the Vice President, Creative Director of Corus Television responded thoughtfully and on a reasoned basis. She also collaboratively furnished a VHS recording of the challenged promo to the complainant for his review, in accordance with his request, although the broadcaster was under no CBSC obligation to do so. The Panel commends Corus for its attitude and the degree of collaboration. The Panel considers that the broadcaster’s obligation of responsiveness has more than been fulfilled on this occasion.

*This decision is a public document upon its release by the Canadian Broadcast Standards Council. It may be reported, announced or read by the station against which the complaint had originally been made; however, in the case of a favourable decision, the station is under no obligation to announce the result.*

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## APPENDIX

### CBSC Decision 07/08-1173 YTV re a promo for the *Naked Brothers Band*

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#### The Complaint

The following complaint was sent to the CRTC on January 27, 2008 and forwarded to the CBSC in due course:

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#### Broadcaster Response

YTV responded on February 21:

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That being said, we do appreciate you taking the time to voice your opinion. At YTV, we welcome all feedback and believe that television watching should be a collaborative effort. It is encouraging to see that you are not only watching television with your granddaughter, but viewing it with a critical eye. Should you have any further inquiries regarding our programming, we encourage you to contact us directly at [info@ytv.com](mailto:info@ytv.com).

### **Additional Correspondence**

The complainant wrote back to YTV on February 21:

I am willing to reconsider my complaint in light of your explanation below before considering any other follow up action. However, in order to do so, I will have to review the promotional material in question. Unfortunately, I was not taping your programming at the time, and now have no way to view the segment. Could you please send me a DVD with the segment on it from your archives (or some other way of getting that segment to me, like a VHS tape)?

He then filed his Ruling Request on February 28 with the following letter:

The broadcaster (through [D. K.], Vice President, Creative Director, Corus Television) sent a response to my original complaint, together with a copy of the 30-second commercial for my review. After carefully reviewing both her comments and the commercial, I find that TECHNICALLY she is correct in her assertion that "any implied physical impact doesn't actually take place on-screen." However, after having watched the segment several times, I find it difficult to believe that any rational viewer (including children) would not interpret what appears in the segment from 18 to 24 seconds to NOT depict violence. [The Vice President] states "At no point does this segment portray Nat's actions as brutality or suggest any intensity or aggression." There is no change in the point of view during the segment. The character takes action in the scene that can only be interpreted as kicking the "chicken" character as the kick is delivered to the location where the chicken character would be laying after falling (albeit off screen).

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