
**CANADIAN BROADCAST STANDARDS COUNCIL
ONTARIO REGIONAL PANEL**

Sun TV (CKXT-TV) re an infomercial for a telephone sex line

(CBSC Decision 06/07-0244)

Decided January 9, 2007

R. Stanbury (Chair), B. Bodnarchuk, R. Cohen (*ad hoc*), K. King, L. Levinson

THE FACTS

On October 8, 2006 at 3:30 pm, Sun TV (CKXT-TV, Toronto) broadcast an infomercial for Canadates, apparently a telephone sex line. The broadcast was preceded by the following advisory in visual format:

The following is a paid advertisement for Canadates brought to you by Thunder Studios. This program contains sexually suggestive content and is intended for adults only. A \$50 Cdn. charge may apply depending on service selected. All models are 18 years of age or older.

The aural advisory that accompanied the above was very similar but not identical. It stated:

The following is a paid advertisement for Canadates brought to you by Thunder Studios. This program may contain sexually suggestive content and is intended for adults only. All models are 18 years of age and older.

Throughout the half-hour infomercial, the words "Feel Free to Call!" were at the top of the screen and "Call now 1-900-643-[####]" at the bottom. There was also an 18+ icon in the upper right-hand corner, but this was not the AGVOT 18+ icon.

The images on-screen consisted of women in bikinis/lingerie and high heels, either individually or in groups, lying on a bed in provocative poses and making alluring facial expressions. There were also scenes of the women talking on telephones, having a pillow fight, as well as other scenes of the women dancing while wearing revealing dresses. Occasionally the women addressed the

camera. Those various non-sequential comments (which are, nonetheless, presented in the order in which they appeared) were as follows:

Hey guys, what are you waiting for? Pick up the phone.

There are sexy girls in your area who want to talk to you right now. So pick up the phone and call. What are you waiting for?

Hey guys, what are you waiting for? Pick up the phone.

Hi guys. My sister and I aren't the only ones who know where the party's at. So pick up the phone and call right now. Call right now. What are you waiting for?

Did you know that there's single girls [*sic*] in your area who want to talk right now? What are you waiting for? Give them a call.

Hey guys, what are you waiting for? Pick up the phone and call right now.

Pick up the phone and call right now. What are you waiting for?

Hi guys. There's lots [*sic*] of single ladies in your area just like my sister and I who are waiting to talk to you. So just pick up the phone and call right now. What are you waiting for? Just call.

Hey guys, what are you waiting for? Pick up the phone and call right now.

Did you know there's single girls [*sic*] in your area who want to talk right now? What are you waiting for? Give them a call.

In addition, a disclaimer was broadcast on three separate occasions about seven minutes apart, during the course of the infomercial. It was made up of the following visual and aural elements. These words appeared at the bottom of the screen and in female voice-over:

This is a paid advertisement and is intended for adults only. A \$50 charge may apply depending on the service selected.

The voice-over continued:

Are you looking to meet sexy, available girls just like these? It's so easy! Just pick up the phone and dial the number on the screen. You could be instantly connected to all kinds of wild women. Whatever you desire, whatever your fantasies, there are all kinds of beautiful women. So what are you waiting for? Call the number on the screen and make a connection right now.

At the conclusion of the broadcast, the following visual advisory was shown:

The preceding was a paid advertisement for Canadates brought to you by Thunder Studios. This program contains sexually suggestive content and is intended for adults only. A \$50 Cdn. charge may apply depending on service selected. All models are 18 years of age or older.

The accompanying aural advisory was:

The preceding was a paid advertisement for Canadates brought to you by Thunder Studios. This program may contain sexually suggestive content and is intended for adults only. All models are 18 years of age and older.

On the day of the broadcast, a complainant sent the following complaint to the CRTC, which forwarded it to the CBSC in due course (the full text of the complaint and all other correspondence can be found in the Appendix):

CKXT, Sun TV, Channel 52 on the antenna, in Toronto, Ontario at 1530h showed a half-hour infomercial for a "phone sex" telephone line. The women portrayed in the commercial were acting in a manner that was not suitable for airing on TV for this time of the day, especially on a Sunday! The images were, in my opinion, pornographic. I took personal offence to seeing this on a holiday weekend. I would expect that there are regulations for time-of-day airings of this type of content. [...]

On October 30, the General Manager, Programming, responded to the complainant in the following terms:

I would like to apologize on behalf of the station for the unfortunate incident in which we aired an infomercial intended for late night telecast during the afternoon. Although the content was approved for telecast anytime, we self-regulate where these air on our station, and never schedule these type of infomercials prior to 1:00 am. This one was scheduled incorrectly in our system, and the infomercial that was supposed to air that afternoon was scooters for seniors.

What happened is unacceptable to us as well, and we have subsequently put forth measures to ensure this does not happen again.

For some reason, the Sun TV reply of October 30 did not get to the complainant. In an e-mail from the respondent noting the non-receipt of the broadcaster response, the complainant also observed:

I have read the CBSC's material that pertains to "Watershed Hours" and Clause 9 [sic] of the *Code of Ethics*. I firmly believe that Sun TV in Toronto is in gross violation of both these guidelines. [...] A commercial portraying women in sexual/seductive context is inappropriate for this time of day, and was very irresponsible on the part of the broadcaster.

As a responsible citizen, I now ask for a ruling by the CSBC with respect to violations of the watershed hour for airing sexual content, intended for adults only, at 3:30 pm.

Since the complainant had not received a copy of the General Manager, Programming's reply, the CBSC forwarded the response of which it had received a copy. The complainant then sent a Ruling Request on November 24, in which he added the following question to the Council:

On what basis/regulation/code of ethics can a phone sex infomercial be "approved for airing anytime" when there is material intended for adults only? And what of the Watershed hour?

THE DECISION

The Ontario Regional Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and the *CAB Violence Code*.

CAB Code of Ethics, Clause 10 – Television Broadcasting

- a) Programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9 pm to 6 am. Broadcasters shall refer to the *Voluntary Code Regarding Violence in Television Programming* for provisions relating to the scheduling of programming containing depictions of violence.

[...]

- f) Advertisements which contain sexually explicit material or coarse or offensive language intended for adult audiences, such as those for theatrically presented feature films, shall not be telecast before 9 pm.

The Ontario Regional Panel Adjudicators read all of the correspondence and watched the challenged infomercial. The Panel concludes that the broadcast violated Clause 10(f) of the *Code of Ethics*.

Programming or Advertising?

In the view of the Panel, an infomercial falls within the category of advertising, rather than programming, certainly for the purposes of Clause 10 of the *CAB Code of Ethics*. It is, after all, a commercial message, that is, an attempt to sell goods or services to the viewer. Accordingly, the Panel considers that the challenged infomercial is subject to the requirements of Clause 10(f).

Sexually Explicit Content

Although the decision of the Quebec Regional Panel in *TVA re a commercial for the Boutique Sexe Cité* (CBSC Decision 02/03-0447 & -0478, July 17, 2003) concluded that the commercial for a Montreal sex shop called Boutique Sexe Cité was not exclusively intended for adults, it is instructive in the matter at hand. The commercial for the sex shop aired during broadcasts of family holiday movies *Maman, je m'occupe des méchants* (the French-language version of *Home Alone 3*) and *Mathilda* which began at 6:30 pm, as well as during the

informational program *Planète Animal* at 1:00 pm. The CBSC received a number of complaints that this commercial, which showed a man arriving home from work and being greeted by his female significant-other wearing white lacy lingerie, was too sexually explicit for broadcast during family programming. The Quebec Panel did not find that the commercial was explicit enough to necessitate a post-Watershed broadcast:

The Quebec Panel does not consider the Boutique Sexe Cité commercial appropriate for broadcast to families, on the one hand, but it does not consider it so adult-oriented that it could be said to be viewable by an exclusively adult audience. On the substantive level, the Panel simply does not find that the commercial was sexually *explicit*. At worst, it was sexually suggestive but even such an acknowledgment cannot result in a finding of breach under Clause 10(f) of the *CAB Code of Ethics*.

[...]

Moreover, the Panel wishes to underscore the fact that it understands the commercial to be depicting a domestic situation or relationship and not a clandestine erotic tryst. The Panel does not conclude that the latter would necessarily present a Code-related problem but rather that the commercial, as broadcast, portrayed an even less problematic representation than might have been the case.

In *CHFD-TV re the documentary Dirty Business: Sex, Thighs and Videotape* (CBSC Decision 04/05-1580, December 15, 2005), the Ontario Regional Panel dealt with a complaint about a documentary on the adult entertainment industry which aired at 1:00 pm. Although it consisted primarily of interviews with fully clothed individuals, it did also contain some clips from pornographic movies, photographs from websites and footage taken at a sex trade show, women in lingerie or other skimpy clothing, touching and flaunting their bodies for the camera, and so on. No bare breasts or genitalia and no shots of sexual activity were shown. The Ontario Panel determined that, due to the program's overall sexual theme, it should have aired post-Watershed:

As might be understood from the corpus of CBSC jurisprudence, there is no mathematical formula applicable to such programming. It is not the presence or absence of scenes involving intercourse or other advanced sexual activity. It relates more to the balance of explicitness and subtlety or innuendo, the nature of the activities, the force or power of the sexuality or eroticism, the adult orientation of the content, the duration and/or frequency of the sexual activities, to some extent the context, and the overall confluence of such considerations.

[...]

In the present matter, the focus of the documentary film is the combination of sexual and erotic activities and the maximization of pecuniary benefit from them. There is not even the modicum of an overlay of other issues [...].

While, in the matter at hand, the interviews were with clothed people, there were clips from "pornographic" movies, website photographs, footage shot at a sex trade show, clips of couples in various states of undress engaging in sexual

activities, and discussions with the Edmonton couple as they determined how far Dawn should progress from her isolated erotic performances to new levels of sexual *contact* with others. The collective effect was clearly content that was, in the view of the Panel, exclusively intended and solely appropriate for adult audiences.

Nor is the documentary saved by techniques such as blurring or pixilation. [...]. The Panel [...] is dealing only with the issue of the Watershed and, on this point, it concludes that the broadcast of the documentary prior to the Watershed constitutes a breach of Clause 10 of the *CAB Code of Ethics*.

In the matter at hand, the infomercial began by representing itself as “contain[ing] sexually suggestive content and [...] intended for adults only.” Although there was no Canadian classification icon on the infomercial, there was one that indicated “18+” as the appropriate level. The images on-screen consisted of women in bikinis/lingerie and high heels, either individually or in groups, lying on a bed in provocative poses, as well as other scenes of the women dancing while wearing revealing dresses. When the women addressed the camera, as they did frequently throughout the infomercial, their language and purpose were enticing, provocative and sexual. Moreover, as in the *Dirty Business* decision, but unlike in the *Boutique Sexe Cité* decision, this infomercial was relentlessly sexually provocative for thirty minutes, rather than thirty seconds. The Panel considers that the infomercial’s theme and duration make it clear that it is material intended exclusively for adult audiences. It also acknowledges that it was inadvertently and incorrectly run in that afternoon time slot. Despite that unconditional acknowledgement, the Panel has no choice but to find that the broadcaster in breach of Clause 10(f) of the Code for airing the challenged infomercial prior to the Watershed.

Broadcaster Responsiveness

In all CBSC decisions, the Council’s Panels assess the broadcaster’s responsiveness to the complainant. In the present instance, the Panel finds that the response of CKXT-TV’s General Manager, Programming, was honest and forthright. Although his e-mail was not long, it spoke candidly to the nub of the complainant’s concern. The Panel considers that CKXT-TV has fully met its CBSC membership responsiveness responsibilities.

ANNOUNCEMENT OF THE DECISION

CKXT-TV is required to: 1) announce the 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 infomercial was broadcast; 2) within the fourteen days following the broadcasts 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 a copy of that written confirmation and with air check copies of the broadcasts of the two announcements which must be made by CKXT-TV.

The Canadian Broadcast Standards Council has found that Sun TV breached Clause 10(f) of the Canadian Association of Broadcasters *Code of Ethics* in its broadcast of an infomercial for a telephone sex line at 3:30 pm on October 6, 2006. Because the infomercial was sexually suggestive and intended exclusively for adults, the CBSC has concluded that the broadcaster breached the Code article that requires that advertisements which contain sexually explicit material intended for adult audiences shall not be telecast before 9:00 pm.

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

APPENDIX

CBSC Decision 06/07-0244 Sun TV (CKXT-TV) re an infomercial for a telephone sex line

The Complaint

The CBSC received the following complaint dated October 8, 2006 via the CRTC:

CKXT, Sun TV, Channel 52 on the antenna, in Toronto, Ontario at 1530h showed a half-hour infomercial for a "phone sex" telephone line. The women portrayed in the commercial were acting in a manner that was not suitable for airing on TV for this time of the day, especially on a Sunday! The images were, in my opinion, pornographic. I took personal offence to seeing this on a holiday weekend. I would expect that there are regulations for time-of-day airings of this type of content. The website to contact the station directly only provides a fax number -- <http://suntv.canoe.ca/contact.html>. It appears that media relations and sales are more important to them than the public. Is there anything that can be done? Thank you.

Broadcaster's Response

The broadcaster responded on October 30:

I am writing to respond to your e-mail to the CRTC and CBSC regarding the infomercial which aired on SUN TV. First of all, thank you for your e-mail as it is through correspondence with our viewers that we strive to constantly improve our service.

I would like to apologize on behalf of the station for the unfortunate incident in which we aired an infomercial intended for late night telecast during the afternoon. Although the content was approved for telecast anytime, we self-regulate where these air on our station, and never schedule these type of infomercials prior to 1:00 am. This one was scheduled incorrectly in our system, and the infomercial that was supposed to air that afternoon was scooters for seniors.

What happened is unacceptable to us as well, and we have subsequently put forth measures to ensure this does not happen again.

Again, please accept my sincere apologies, and do not hesitate to contact me directly if you have any questions.

Additional Correspondence

The complainant submitted his Ruling Request on November 23 with the following note:

I have waited for a response from Sun TV regarding my complaint as filed above and have not received anything. I have read the CBSC's material that pertains to "Watershed Hours" and Clause 9 [sic] of the *Code of Ethics*. I firmly believe that Sun TV in Toronto is in gross

violation of both these guidelines. I am very disappointed that Sun TV did not respond, and I feel that they expected I would just go away and/or forget. A commercial portraying women in sexual/seductive context is inappropriate for this time of day, and was very irresponsible on the part of the broadcaster.

As a responsible citizen, I now ask for a ruling by the CSBC with respect to violations of the watershed hour for airing sexual content, intended for adults only, at 3:30 pm. I would also ask for a follow-up as to why SUN TV did not respond to my concerns when asked by the CBSC. And lastly, I request comments from the CBSC -- after viewing the logger tapes that were supposed to be secured as per [the CBSC Correspondence Officer]'s request on 1 Nov 06 -- as to the ethical correctness of SUN TV's airing. I request that a copy of any rulings or other correspondence be mailed to my address that you have on file.

I have an extended absence from my office, so I would ask that e-mail regarding this file not be sent to the e-mail [xx@xx.xx] but instead to my personal email below.

I can be reached after 4:30 pm weekdays at [###-###-####] until 11 Dec 06. I will be out of the country after this date until mid-January. I hope that this will be taken into consideration if I am requested to respond to Sun TV or the CBSC during this time.

I am very interested in hearing from the CBSC on this matter in the near future.

Since the complainant indicated that he had not received the response from Sun TV, the CBSC forwarded him a copy of the October 30 response. The complainant wrote back on November 24:

Thank you for forwarding this to me; however something does not seem to add up. [The CBSC's Correspondence Officer] sent me an email on the 1 Nov 06 indicating that I should receive a response within 21 days. If Sun TV had sent a response on 30 Oct 06 why wouldn't she have forwarded it to me on 1 Nov 06 instead of telling me to wait 21 days?

I can't help but to feel concerned with the handling of my issue by the CBSC. The first e-mail I received from [the CBSC's Correspondence Officer] stated something to the effect that she would not be able to pursue my case as I did not provide a date. However, the letter that I received from the CRTC, that was cc'd to the CBSC and caused the CBSC to respond to me, was titled at the top of the page in bold letters with the date and time of the airing. I faxed a letter to the CBSC to give amplifying detail on this. I later received an e-mail from her referencing a telephone conversation with her that I never had.

Now, having read the response from Sun TV I ask that you address and respond to the following concerns:

1. On what basis/regulation/code of ethics can a phone sex infomercial be "approved for airing anytime" when there is material intended for adults only? And what of the Watershed hour?
2. Can you please provide an explanation as to why the CBSC misunderstood the date and time of my case when it was clearly stated on the letter sent by the CRTC?
3. Why did the CBSC send me an email stating that I would receive a response from Sun TV within 21 days when the CBSC had a response on 30 Oct 06?

I fully understand that there are a lot of complaints recieved by the CBSC and there is a

process that must be followed, both of which take time to handle. However, as you can see from my concerns above I believe there are shortcomings that need to be addressed. In light of them all, I am losing confidence in the system.

I would as that you ensure that this e-mail be included as a document for consideration when a ruling is made by the CBSC.

The CBSC responded to that letter on November 28 with the following explanation:

The Canadian Broadcast Standards Council (CBSC) has received your e-mail of November 24, 2006 in which you raise questions about the handling of your file. Upon close examination of your file, it appears that there were indeed a couple of "slip-ups" in the initial handling of your complaint and we sincerely apologize for these oversights. The CBSC receives a large amount of correspondence in a day and we are an office of only five individuals. Rest assured that your complaint is now following normal procedure and will be adjudicated at the next meeting of the CBSC's Ontario Regional Panel. The date for that meeting has yet to be set, as we generally wait until we have more than one file to discuss before calling a meeting. It will, however, be held within the next six months.

In response to your question about the infomercial being "approved for airing anytime", that comment by the station likely referred to the process by which television advertisements are assessed by the Telecaster Services of the Television Bureau of Canada (TVB). Telecaster Services pre-clear commercials and infomercials based on a set of guidelines. Telecaster is completely separate from the CBSC and the guidelines administered by both organizations are not identical. The CBSC has explained in its previous decisions that approval by Telecaster does not mean that the content cannot be found in violation of the codes administered by the CBSC. Under Clause 10 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*, broadcasters shall not air sexual material intended for adults only before the Watershed hour of 9:00 pm. The CBSC has had to determine in previous decisions what type of content constitutes "sexual material intended for adult audiences". It is under that code provision and based on those precedent decisions that your complaint will be examined.

Your e-mail of November 24 will be included in the review of this file. We apologize again for the oversights that occurred in the initial treatment of your complaint.

The complainant replied on November 28:

Your timely response is appreciated and has rejuvenated my confidence. Thank you.

I look forward to the CBSC's ruling.