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**CANADIAN BROADCAST STANDARDS COUNCIL**

**ONTARIO REGIONAL PANEL**

**CILQ-FM re “Two Minutes Away” promos**

(CBSC Decision 06/07-1122)

Decided April 14, 2008

R. Stanbury (Chair), M. Ziniak (Vice-Chair), R. Cohen (*ad hoc*), K. King,

H. Pawley (*ad hoc*) and P. Wedge (*ad hoc*)

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**THE FACTS**

CILQ-FM, more familiarly known as Q107, is a rock radio station in Toronto. In early 2007, Q107 was airing the following promotional liners for the station: “You’re never more than two minutes away from great classic rock.” The CBSC received a complaint from a listener who alleged that the station was not delivering on that promise; that is, there was frequently more than two minutes worth of non-musical content between songs. The listener’s first letter of April 9, 2007 read as follows:

My complaint is with the radio station Q107 in Toronto. They have been advertising now for some time that "You're never more than two minutes away from great music" yet listening to their station, particularly in the morning, they don't come anywhere close to this advertised promise, with some stretches of talking going five or six minutes between songs. I feel this is a form of false advertising and I wonder how they are able to get away with this.

After the CBSC explained to him that it requires specific broadcast dates and times in order to pursue a complaint, he wrote back on May 22:

I have attached a document showing a one-hour time-line of programming for Q107 radio station in Toronto for Friday, May 18, 2007 between 8:38 am and 9:38 am in regards to their constant advertising that “you’re never more than 2 minutes away from great classic

rock". You will see there are a few stretches of 12 and 14 minutes when NO music is played, and they even advertise this "never more than 2 minutes" during a 4-minute break!!! There were 2 minutes of music in the first half hour of this time frame!!!!

As indicated in his e-mail, the complainant attached a document providing a detailed description, with precise times, of the content broadcast during the one-hour period indicated (that document and the full text of all other correspondence can be found in Appendix B).

Q107 replied to the complainant on June 8:

We have reviewed the logger tape from May 18, 2007, between the hours of 8:38 am and 9:38 am. At no point was the Promotional Liner aired. While it is true that 12 and 14 minute segments were aired without music, this is typical during the broadcast of our Morning Show. We did not find any instance in which the Promotional Liner was broadcast during a 4-minute commercial break.

As you know, the Station has a music format, and broadcasts mainly classic rock. Like most music stations, the Station does not *only* broadcast music; our Morning Show, which airs between 5:00 am and 9:00 am, Monday to Friday, consists of some music, some news and information, and some other 'spoken word' content.

Recently, the Station reduced its commercial inventory between the hours of 9:00 am and 5:00 am. During those hours, we only air commercials in two minute increments, or as we call them, 2 minute "stop-sets". The Station now promotes the 2 minute stop-set by broadcasting the Promotional Liner during the hours in which the 2 minute stop-sets are aired, usually before a commercial break. The Promotional Liner is not broadcast between the hours of 5:00 am and 9:00 am, when our commercial breaks tend to be longer than 2 minutes, and when we broadcast more than just music.

In view of the foregoing, we do not believe that the Station's broadcast of the Promotional Liner has been misleading in any way that would constitute a violation of the Canadian Association of Broadcasters' *Code of Ethics* (the "Code"), which is administered by the CBSC and to which we adhere. We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Code and standards required of us as a member of the CBSC.

The complainant filed his Ruling Request on June 20 and explained that he did not agree with the station's characterization of the issue:

Let me state that my interpretation, and many others I have discussed this with, of the promotional liner above is this:

I will not have to wait MORE than 2 minutes, EVER, 24 hours a day, 7 days a week, 365 days a year from the time one song ends to when the next song begins. That is what that promotional liner implies! 2 minutes! No matter how you spin it. I think it is pretty clear. It doesn't say no more than two 2 minutes commercial stop-steps with spoken word thrown in-between.

[...] How can I NEVER BE MORE THAN 2 MINUTES AWAY FROM GREAT CLASSIC ROCK when they acknowledge in their letter that they have no intentions of fulfilling this for at least 4 hours a day during their morning show as [the Program Director] says in his

letter. I did not make an audio recording, only hand notes but I do know what I heard! And that was the airing of this liner twice in the hour I carefully listened to and made detailed notes. Regardless of whether it was aired or not, they continue to air the liner immediately after the morning show and constantly throughout the day, between the hours of 9:00 am and 5:00 am.

[...]

I will acknowledge that since my initial complaint they have changed the wording to this liner during the hours of between 5:00 am and 9:00 am to "Coming up at 9 you're never more than" because, as he acknowledges in his letter, their commercial breaks tend to be longer than 2 minutes and they broadcast more than just music during that time frame. But as you can see from a 2-hour snapshot of 1 day they have no intention of fulfilling this promotional liner morning or afternoon. [...]

In closing of his letter, [the Program Director] says "we do not believe that the station's broadcast of the Promotional Liner has been misleading in any way." I strongly disagree and I think the whole use of these promotional liners is seemingly intentionally misleading, and at times seem to be aired intentionally during breaks longer than 2 minutes [...].

The station provided the CBSC with recordings of its May 18 broadcast from 8:00 to 10:00 am (a precise break-down of the content and times can be found in Appendix A). The time slot from 8:00 to 9:00 am was the concluding hour of Q107's morning show, *Derringer in the Morning* which aired from 5:00-9:00 am. It consisted of banter between the hosts, news, sports, traffic updates, advertisements, and promotional spots for a station contest. It was not until 8:21 am that a song was played, which lasted until 8:25 am. The next song was broadcast at 8:33-8:38 am and, following more banter between the hosts, a traffic update and a series of advertisements, another song at 8:50-8:53 am. The "2 Minutes Away" promo did not air during this hour block of time.

The morning show ended at 9:00 am and Joanne Wilder took over as DJ. It was during this hour that the promotional liner in question was broadcast. For example, at 9:13 am, listeners heard "The Q107 nine-to-five classic rock superset, in concert with Grand & Toy, rolls on next. You're never more than two minutes away from great classic rock."

A similar promo aired at 9:26 am: "You're never more than two minutes away from great classic rock. Q107." That exact promo aired an additional two more times, as well as three other variations of it, including "There you go. The quickest two-minute break in radio. You're back to more great classic rock. Q107." And "The waiting is the hardest part. Not on Q107, where you're only two minutes away from more great classic rock." Wilder played a total of nine songs during the hour from 9:00 to 10:00 am, interspersed with her commentary, advertisements, other promos for the station and the "2 Minutes Away" promos. In some cases, roughly two minutes or less elapsed between the conclusion of one song and the beginning of another; however, in at least three instances, the span was three or four minutes.

## THE DECISION

The Ontario Regional Panel examined the complaint under Clause 12 of the Canadian Association of Broadcasters' (CAB) *Code of Ethics*.

### Clause 12 – Contests and Promotions

All on-air contests and promotions shall be conceived and conducted fairly and legitimately and particular care shall be taken to ensure that they are not misleading, potentially dangerous or likely to give rise to a public inconvenience or disturbance and that any prizes offered or promises made are what they are represented to be.

The Panel Adjudicators read all of the correspondence and listened to a recording of the broadcast in question. The Panel concludes that the station violated Clause 12 regarding misleading promotions.

### A Mathematical Issue

This matter is not, as is popularly said in many contexts, rocket science. The representation at times material to this complaint was that “You’re never more than two minutes away from great classic rock.” The Panel assumes that there was a reason for such an on-air representation — it was to attract listeners. That’s fair. And reasonable. The question for the Panel is whether it was accurate. In this respect, the Panel considers it important to note, preliminarily, that it does not agree with the complainant’s interpretation of the words “two minutes away”. The two minutes can, after all, run in *either* direction. In other words, one could still, quite legitimately, be *four* minutes away and still be within two minutes from the song that just ended and, upon the expiry of that two minutes, be within two minutes of the song about to begin. That is not hair-splitting or quibbling; it’s accurate, whether or not the broadcaster had actually contemplated that meaning. It is what the words say. That said, had the broadcaster planned such an interpretation, one might conclude that it would have constituted a way of fooling listeners, a way of taking advantage of a loophole.

Alas, though, for the broadcaster, in the larger context, that *correct* interpretation of the phrase is of little help, although it finds some application in the post-morning drive period. In the first half hour of the challenged May 18 time period, there was no song before the lapse of 21 minutes. And then another 12+ minutes before the next song (in the second half hour). Then just under 12 minutes until the next. Then 13 minutes (into the third half hour) for the fourth song. Once the Derringer program ended at 9:00am, the music proliferated: at intervals of 2:18, 0:05, 4:17, 2:18, 0:33, 4:19, 2:11, and 3:35 during the 9:00am - 10:00am period.

Were this decision to be *confined* to the 9:00am – 10:00am period, even applying the *generous* interpretation of the “never more than two minutes away” phrase, the Panel would be reluctant to find a breach of Clause 12. The slight overages on two of the eight promos (namely, 4:17 and 4:19) would not be material. The broadcaster created a greater problem for itself, though, by not qualifying or restricting other words in the promo. By saying, and reiterating, *never*, without excluding the *very* large block of time between 5:00am – 9:00am, it appears to the Panel that it was purposefully luring listeners by the promise of frequent music. In so doing, the Panel concludes that Q107 did not, as the Clause requires: deliver its promotions “fairly and legitimately”; take “particular care [...] to ensure that they [we]re not misleading”; and make certain that the “promises made [we]re what they [we]re represented to be.”

In summary, the Panel concludes that the “never more than two minutes” representation was in breach of Clause 12 of the *CAB Code of Ethics*. The Panel is also concerned about this second breach of Clause 12 by Q107 in a relatively short space of time [see *CILQ-FM re the broadcast of a Rolling Stones concert* (CBSC Decision 04/05-1911 & -1915, December 15, 2005)].

### **Broadcaster Responsiveness**

In all of its decisions, the CBSC examines the response of the broadcaster to the complainant(s). The CBSC expects that the station will provide a thorough, thoughtful and detailed reply to any and all complainant concerns. In doing so, the broadcaster need not agree with a complainant’s view of the broadcast. Indeed, it is usually only when there is a difference of opinion between the broadcaster and the complainant that a complaint results in adjudication by a CBSC Panel. In the matter at hand, Q107 provided a focussed response to the complainant. It appears, further, from the complainant’s correspondence, that the station’s responsiveness did lead it to responsively modify the “never more than two minutes away” promotion in response to the complainant’s challenge to the practice. The Ontario Regional Panel finds that Q107 clearly met its responsibilities of responsiveness in this instance.

### **ANNOUNCEMENT OF THE DECISION**

CILQ-FM is required to: 1) announce the decision, in the following terms, once during morning drive within three days following the release of this decision and once more within seven days following the release of this decision between 8:00 am and 10:00 am, that is to say, during the time period in which the broadcast of the promotional liner was challenged; 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 CILQ-FM.

The Canadian Broadcast Standards Council has found that CILQ-FM (Q107) violated the Canadian Association of Broadcasters' *Code of Ethics* in its use of station promotions promising that listeners would never be more than two minutes away from great classic rock, which was not always the case. By broadcasting those promos in May 2007, Q107 violated Clause 12 of the Code, which requires that promotions be fair and legitimate, not misleading, and that promises made are what they are represented to be.

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

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## APPENDIX A

### CBSC Decision 06/07-1122 CILQ-FM re “Two Minutes Away” promos

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The following is a description and times of the content that was broadcast from 8:00 to 10:00 am on CILQ-FM (Q107, Toronto) on May 18, 2007. The first hour contained the last hour of the Q107 morning show, *Derringer in the Morning*, which was broadcasting live from a contest-winner’s home in Whitby as part of the “Derringer’s Tour of the Neighbourhood” contest. At 9:00 am, the morning show concluded and Joanne Wilder took over as host, playing music and promoting contests, etc.

The broadcast is broken up into four separate tracks on the CD provided to the CBSC, each containing half an hour of programming. The track name and time within the track are provided below.

#### Track 800

0:00 advertisements

2:35-14:55 discussions between hosts

14:55 info update: traffic

15:50 Lipton iced tea ad

16:00 news

17:17 ads

19:35 sports

20:55 promo for “Derringer’s Tour of the Neighbourhood”

21:04 song “All Along the Watchtower” by Jimi Hendrix

25:00 discussion among hosts, live from Whitby

26:15 traffic

27:11 ads

Track 830

0:00 ads

1:05 Derringer's "Tool of the Day"

3:23-8:46 song "New Year's Day" by U2

8:47-15:05 discussions between hosts & contest winner, live from Whitby

15:05 traffic

16:02 ads

20:29 promo for "Derringer's Tour of the Neighbourhood"

20:41-23:07 song "Down on the Corner" by Creedence Clearwater Revival

23:08 discussion among hosts

24:55 ads

28:02 discussion among hosts

Track 900

0:00-4:30 continuation of discussion

4:30 conclusion of morning show; concluding clip montage

5:33 promo

5:47 host Joanne Wilder intros "Friday Morning Superset"

6:10-13:46 song "L.A. Woman" by The Doors

13:47 promo: "The Q107 nine-to-five classic rock superset, in concert with Grand & Toy, rolls on next. You're never more than two minutes away from great classic rock."

13:56 ads

15:56 promo for "Q107 Superset"

16:02-20:34 song "Misty Mountain Top" by Led Zeppelin

20:35 promo

20:39-24:31 song "Lager and Ale" by Kim Mitchell

24:32 host banter

26:29 promo: "You're never more than two minutes away from great classic rock. Q107."

26:34 ads

28:42 promo

28:48-29:59 song "Whiter Shade of Pale" by Procol Harum

### Track 930

0:00-2:41 continuation of song "Whiter Shade of Pale"

2:41 promo: "Hang on, 'cause you're never more than two minutes away from great classic rock. Including [clip from "Roxanne" by The Police] on Q107."

2:54 ads

4:53 promo: "There you go. The quickest two-minute break in radio. You're back to more great classic rock. Q107."

4:59-8:00 song "Roxanne" by The Police

8:00 promo for "Derringer's Tour of the Neighbourhood"

8:33-11:28 song "The Boys in the Bright White Sports Car" by Trooper

11:28-13:28 host talks about songs, contest, etc.

13:29 promo: "You're never more than two minutes away from great classic rock. Q107."

13:33 ads

15:43 promo

15:47-19:13 song "Start Me Up" by the Rolling Stones

19:13 promo: "You're never more than two minutes away from great classic rock. Q107."

19:18 ads

20:18 promo

20:22 ads

21:24-25:18 song "Alabama" by Neil Young

25:18 host talks about "Classic Rock Long Weekend", etc.

26:20 promo: "The waiting is the hardest part. Not on Q107, where you're only two minutes away from more great classic rock."

26:29 ads

28:29 cue to call to win concert tickets

28:53-29:59 song "Spinning Wheel" by Blood, Sweat and Tears

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## APPENDIX B

### CBSC Decision 06/07-1122 CILQ-FM re "Two Minutes Away" promos

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#### The Complaint

The CBSC received the following complaint dated April 9, 2007 via the CRTC:

My complaint is with the radio station Q107 in Toronto. They have been advertising now for some time that "You're never more than two minutes away from great music" yet listening to their station, particularly in the morning, they don't come anywhere close to this advertised promise, with some stretches of talking going five or six minutes between songs. I feel this is a form of false advertising and I wonder how they are able to get away with this.

In response to that e-mail, the CBSC explained that it requires specific programming dates and times in order to pursue a complaint. The complainant wrote back on May 22:

I have attached a document showing a one-hour time-line of programming for Q107 radio station in Toronto for Friday, May 18, 2007 between 8:38 am and 9:38 am in regards to their constant advertising that "you're never more than 2 minutes away from great classic rock". You will see there are a few stretches of 12 and 14 minutes when NO music is played, and they even advertise this "never more than 2 minutes" during a 4-minute break!!! There were 2 minutes of music in the first half hour of this time frame!!!!

The attached document set out the following:

Q107 self promotion stating "you are never more than 2 minutes away from great classic rock" is aired constantly every day.

Q107 Friday May, 18, 2007 between 8:38 am and 9:38 am.

8:38 am to 8:50 am = 12 minutes. There was everything from traffic and weather reports, 6 to 8 commercials, and a conversation about how people from Whitby were better than the people from Ajax during this break, for a total of twelve minutes, coming nowhere near their above-mentioned self promotion.

8:50 am to 8:52 am = 2 minutes. They played one song.

8:52 am to 9:06 am = 14 minutes. There were more commercials, more self promotions, conversations about horse racing, grammar, the theatre and the like for a total of fourteen minutes, once again coming nowhere near this "never more than 2 minutes away from great classic rock" they constantly advertise.

2 minutes of music in half an hour????

9:06 am to 9:13 am = 19 minutes [*sic*, actually 7 minutes]. They played music.

9:13 am the self promotion “you’re never more than 2 minutes away from great classic rock” is aired.

9:13 am to 9:15 am = 2 minutes. There were commercials.

9:15 am to 9:24 am = 9 minutes. They played music.

9:24 am to 9:28 am = 4 minutes. There was more conversation re gas prices, concert cancellation etc.

At 9:26 am, in the middle of a 4 minute break, they air they advertisement “you’re never more than 2 minutes away from great classic rock”.

9:28 am to 9:37 am = 9 minutes. They played music.

## Broadcaster’s Response

The broadcaster responded to the complainant on June 8, 2007:

The Canadian Broadcast Standards Council (the “CBSC”) has asked us to respond to your email of May 22, 2007 in which you raised concerns regarding the use of the promotion aired on CILQ-FM (the “Station”), which states “You’re never more than two minutes away from great classic rock” (the “Promotional Liner”). Specifically, you state that during the hour beginning at 8:38 am and ending at 9:38 am on May 18, 2007, the Station aired the Promotional Liner at a time when no music was played for several minutes. You also indicated that you heard the Promotional Liner in the middle of a 4-minute commercial break.

We have reviewed the logger tape from May 18, 2007, between the hours of 8:38 am and 9:38 am. At no point was the Promotional Liner aired. While it is true that 12 and 14 minute segments were aired without music, this is typical during the broadcast of our Morning Show. We did not find any instance in which the Promotional Liner was broadcast during a 4-minute commercial break.

As you know, the Station has a music format, and broadcasts mainly classic rock. Like most music stations, the Station does not *only* broadcast music; our Morning Show, which airs between 5:00 am and 9:00 am, Monday to Friday, consists of some music, some news and information, and some other ‘spoken word’ content.

Recently, the Station reduced its commercial inventory between the hours of 9:00 am and 5:00 am. During those hours, we only air commercials in two minute increments, or as we call them, 2 minute “stop-sets”. The Station now promotes the 2 minute stop-set by broadcasting the Promotional Liner during the hours in which the 2 minute stop-sets are aired, usually before a commercial break. The Promotional Liner is not broadcast between the hours of 5:00 am and 9:00 am, when our commercial breaks tend to be longer than 2 minutes, and when we broadcast more than just music.

In view of the foregoing, we do not believe that the Station’s broadcast of the Promotional Liner has been misleading in any way that would constitute a violation of the Canadian Association of Broadcasters’ *Code of Ethics* (the “Code”), which is administered by the CBSC and to which we adhere. We take our responsibilities as broadcasters very seriously, and work hard to make sure all of our programming complies with the *Broadcasting Act*, the *Radio Regulations* and the Code and standards required of us as a member of the CBSC.

We trust that this letter has addressed your concerns. We at the Station recognize the importance of listener feedback and appreciate all comments.

## Additional Correspondence

The complainant filed his Ruling Request on June 20, 2007 with the following note:

This is in response to my complaint, CBSC File C06/07-1122, concerning radio station Q107 in Toronto and their continuing use of the promotional liner "You're NEVER MORE than 2 minutes away from great classic rock."

I have received and reviewed the letter from [the Program Director] from CILQ-FM dated June 8, 2007. I will include a copy at the end of my response, and their explanation of their use of the promotional liner mentioned above and I have the following comments and questions.

Let me state that my interpretation, and many others I have discussed this with, of the promotional liner above is this:

I will not have to wait MORE than 2 minutes, EVER, 24 hours a day, 7 days a week, 365 days a year from the time one song ends to when the next song begins. That is what that promotional liner implies! 2 minutes! No matter how you spin it. I think it is pretty clear. It doesn't say no more than two 2 minutes commercial stop-steps with spoken word thrown in-between.

In his letter, [the Program Director] said they had reviewed the tapes for the day and hour I logged and have made a written record of, Friday May 18, and said there was no airing of this promotional liner in that hour, but did acknowledge it is true that 12 and 14 minute segments were aired without music; this is typical of their morning show. Hello!!! How can I NEVER BE MORE THAN 2 MINUTES AWAY FROM GREAT CLASSIC ROCK when they acknowledge in their letter that they have no intentions of fulfilling this for at least 4 hours a day during their morning show as [the Program Director] says in his letter. I did not make an audio recording only hand notes but I do know what I heard! And that was the airing of this liner twice in the hour I carefully listened to and made detailed notes. Regardless of whether it was aired or not, they continue to air the liner immediately after the morning show and constantly throughout the day, between the hours of 9:00 am and 5:00 am.

I have made a second-by-second hand-written log for June 11, 2007 from 2:59:00 pm to 5:00:20 pm, where there were 6 breaks longer than 2 minutes with NO GREAT CLASSIC ROCK. I have also made an audio recording, for my reference and records. I have not included either of these in this correspondence, but will forward on should they be needed. In that 2-hour NON-morning show time-slot, there were breaks of 5 minutes 40 seconds, 4 minutes 45 seconds, 5 minutes, 6 minutes and 20 seconds (during this 6 minute plus break BETWEEN GREAT CLASSIC ROCK there was a 3 minute rant??? by their afternoon host about *American Idol*), 4 minutes, and 4 minutes and 30 seconds. How are any of these breaks, the shortest being 4 minutes, NEVER MORE THAN 2 MINUTES AWAY FROM GREAT CLASSIC ROCK???????????

I will acknowledge that since my initial complaint they have changed the wording to this liner during the hours of between 5:00 am and 9:00 am to "Coming up at 9 you're never more than" because, as he acknowledges in his letter, their commercial breaks tend to be longer

than 2 minutes and they broadcast more than just music during that time frame. But as you can see from a 2-hour snapshot of 1 day they have no intention of fulfilling this promotional liner morning or afternoon. Can someone please explain to me how I'm NEVER MORE THAN 2 MINUTES AWAY FROM GREAT CLASSIC ROCK when their afternoon host goes on a 3-minute rant on how bad *American Idol* is, then follow that up with 3 more minutes of traffic, ads and a promotional liner that says "you're only 2 minutes away from damn-I-wish-I-wrote-that." How can you use both liners? Either you're 2 minutes away from damn-I-wrote-that or 2 minutes away from great classic rock. Using both liners, are you not 4 minutes away from great classic rock?

In closing of his letter, [the Program Director] says "we do not believe that the station's broadcast of the Promotional Liner has been misleading in any way." I strongly disagree and I think the whole use of these promotional liners is seemingly intentionally misleading, and at times seem to be aired intentionally during breaks longer than 2 minutes, which is evident on the June 11 recording and log I have made. [The Program Director] only raises more questions in my mind which I would like some answers to such as:

How is this being presented to those who are being sold commercial time on the station? Are they under the same impression I am when they hear this promotional liner, thinking that there will be less time for competitive advertising during the airing of their respective commercial spots with only a 2-minute window?

Or are they aware of the station's seemingly obvious attempts to mislead the listeners with no intention of fulfilling this promise, thus complicit in this false or misleading advertising?

How is this setting a fair and competitive stage for those broadcasters and advertisers in the industry that do play by the rules?

I look forward to a response.