
CANADIAN BROADCAST STANDARDS COUNCIL

NATIONAL SPECIALTY SERVICES PANEL

Teletoon Retro re an advertisement for The Night Exchange during *Batman: The Animated Series*

(CBSC Decision 10/11-1669)

Decided December 15, 2011

R. Cohen (Chair), M. Bulgutch (*ad hoc*), S. Crawford (*ad hoc*), D. Dobbie (*ad hoc*),
D.-Y. Leu, D. Ward

THE FACTS

Teletoon Retro is a specialty service that broadcasts classic animated programs from the 1960s, '70s, '80s and '90s, targeted at a variety of different age groups, including adults who want to revisit favourite cartoons from their childhood. The service aired an episode of *Batman: The Animated Series* at 1:30 am Eastern Time on May 16, 2011 (11:30 pm on May 15 in the complainant's Mountain time zone). The episode, which was originally produced in 1992, included some very mild comic-book-style action and violence. Teletoon Retro rated it C8.

A 30-second commercial for an adult telephone service called The Night Exchange was aired twice during *Batman*, in the first and third commercial breaks. The name of the service appeared on the screen as well as the telephone number and the words "local fun", "easy to use" and "free trial". The commercial consisted of a series of scenes of various individual women speaking to the camera or using a telephone. In a somewhat seductive manner, they each made comments to entice viewers to call, including "Do you wanna have some fun?", "Show off your fun side", and "You can't have fun if you don't make the call". One woman said, "Sometimes we just talk. And sometimes it gets so good. We decide to take it to the next level." All of the women were fully clothed in sleeveless blouses, skirts and similar attire. One woman was shown reclining on a bed,

one was lying on a desk, and another was sitting upright on a couch. The advertisement concluded with the website "The Night Exchange.com" written in white on a black background with a list of telephone numbers in different area codes and a toll free number, followed by the words "call now". A woman's seductive voice said in voice-over "Call The Night Exchange. Hot talk, real people."

The CBSC received a complaint dated May 13, 2011 about the broadcast of the advertisement during *Batman* (the full text of all correspondence can be found in the Appendix). The complainant wrote that he had already contacted Teletoon Retro and the station had responded that it aired The Night Exchange commercials exclusively after midnight in the Eastern time zone and was thus in compliance with CBSC guidelines. The complainant made the following argument:

With today's technology, the issue is not what time the show is broadcast, but is the advertising content appropriate for the rating of the show. I PVR this show for my children and would like this type of advertising removed from a show that is rated for children!

I have never lodged a complaint with the CRTC, but this is unacceptable to have adult themes broadcast during a children's animated television show.

The CBSC informed the complainant that he would need to provide a specific date and time of broadcast in order for the CBSC to pursue his complaint. He provided that information on May 17. He noted that the commercial appears during every late-night broadcast of *Batman*, but provided the aforementioned May 16 broadcast as an example. He reiterated his concerns in the following terms:

I recognize that the time of the broadcast is late, but the content of the commercials is not appropriate for a children's show regardless of the broadcast time. My children do not watch this show at the time it is aired, but PVR every episode to watch at their convenience. As a parent, I make every effort to make sure my children watch television shows that are age appropriate. I should not have to scrutinize the advertisements that are broadcast during a children's show to ensure that they are age suitable as well. I do not believe that advertisements promoting adult chat lines should be televised during a show that is intended for children's viewing.

Teletoon Retro sent an official response to the complaint on May 24. The station wrote that it regretted that it had upset the viewer with its airing of The Night Exchange advertisement, but pointed out that the commercial had only aired after 9:00 pm. With respect to the complainant's concern about recording the program to watch at a different time, Teletoon Retro took the following position:

Batman The Animated Series is a program that appeals to viewers of all ages but in its current programming slot at 1:30 am ET, Teletoon has chosen to cater this program to our mature audience. With new PVR technology we cannot control when our viewers choose to watch our programming. We can only advise them to be aware of the program's original broadcast time as the advertisements are intended for the audience watching at that time.

The complainant was not satisfied with Teletoon Retro's response. He filed his Ruling Request on May 24 with the following note:

The broadcaster has insisted that they are following the guidelines and are doing nothing wrong according to the CBSC. I understand that Teletoon Retro is following the "letter of the law", but they are not using their judgement when placing advertisements of a mature nature on during a children's television program. The guidelines need to be revisited to catch up with the technology (PVR) in use, to keep this from happening.

THE DECISION

The National Specialty Services Panel examined the complaint under the following provisions of the Canadian Association of Broadcasters' (CAB) *Code of Ethics* and *Violence Code*:

CAB Code of Ethics, Clause 4 – Children's Programs

- (1) Recognizing that programs designed specifically for children reach impressionable minds and influence social attitudes and aptitudes, it shall be the responsibility of broadcasters to provide the closest possible supervision in the selection and control of material, characterizations and plot.
- (2) Nothing in the foregoing shall mean that the vigour and vitality common to children's imaginations and love of adventure should be removed. It does mean that such programs should be based upon sound social concepts and presented with a superior degree of craftsmanship, and that these programs should reflect the moral and ethical standards of contemporary Canadian society and encourage pro-social behaviour and attitudes. Broadcasters should encourage parents to select from the richness of broadcasting fare the best programs to be brought to the attention of their children.

CAB Code of Ethics, Clause 10(f) – Television Broadcasting (Scheduling)

Advertisements which contain sexually explicit material [...] intended for adult audiences [...] shall not be telecast before 9 pm.

CAB Code of Ethics, Clause 13 – Advertising (General Principles)

- (a) Recognizing the service that commercial sponsors render to listeners and viewers in making known to them the goods and services available in their communities and realizing that the story of such goods and services goes into the intimacy of the home, it shall be the responsibility of broadcasters and their sales representatives to work with advertisers and agencies in improving the technique of telling the advertising story so that these shall be simple, truthful and believable, and shall not offend prevailing community standards of tolerability.
- (b) Advertising is to be made most effective not only by the use of an appropriate selling message but by earning the most favourable reaction of the public to the sponsor by providing the best possible programming. Nothing in the foregoing shall prevent the dramatization of the use, value or attractiveness of products and services. While

appropriate legislation protects the public from false and exaggerated claims for drugs, proprietary medicines and foods, it shall be the responsibility of broadcasters and their sales representatives to work with the advertisers of these products and the advertising agencies to ensure that their value and use are told in words that are not offensive. [...]

CAB Violence Code, Article 4 – Classification System

C8 - Children Over 8 Years

This classification is applied to children's programming that is generally considered acceptable for youngsters 8 years and over to view on their own. It is suggested that a parent/guardian co-view programming assigned this classification with younger children under the age of 8.

Programming with this designation adheres to the provisions of the Children's section of the Canadian Association of Broadcasters' (*CAB*) *Violence Code*. These include not portraying violence as the preferred, acceptable, or only way to resolve conflict; or encouraging children to imitate dangerous acts which they may see on the screen.

Programming within this classification might deal with themes which could be unsuitable for younger children. References to any such controversial themes shall be discreet and sensitive to the 8-12 year age range of this viewing group.

Violence Guidelines

- any realistic depictions will be infrequent, discreet, of low intensity, and shall portray the consequences of violence.
- violence portrayed must be within the context of the storyline or character development.
- might include mild physical violence, comedic violence, comic horror, special effects; fantasy, supernatural, or animated violence

Other Content Guidelines

- Language: no profanity; might have infrequent use of language which may be considered by some to be socially offensive or discriminatory, and then only if employed within the context of storyline or character development.
- Sex/Nudity: none

The Panel Adjudicators read all of the correspondence and viewed the challenged broadcast. The majority of the Panel concludes that there was no breach of any of the aforementioned Code provisions. Two Adjudicators dissent.

The Content of the Advertisement for The Night Exchange

Clause 10(f) of the *CAB Code of Ethics* requires that advertisements which contain sexually explicit material intended exclusively for adult audiences be aired only during the Watershed period of 9:00 pm to 6:00 am. The question for the National Specialty Services Panel is whether or not the content of The Night Exchange commercial falls into the category of “sexually explicit material”. The Panel is unanimous in its conclusion that the commercial does not fall into that category. Neither the images nor the verbal comments can be said to be even remotely sexually *explicit*. There are no scenes of people engaged in sexual activity. All of the women are fully clothed and, at that, their clothing is not particularly provocative. There are also no verbal descriptions of sexual activity. The women simply encourage viewers to call to “have some fun”. Even the one woman’s remark that “Sometimes it gets so good. We decide to take it to the next level” is sufficiently vague that it cannot be considered explicit. Moreover, it is not even clear from the content of the commercial that the service being advertised is indeed a sex telephone line or merely just a chat line. That people may discover that fact if they call the number or visit the website is irrelevant to the CBSC’s assessment of the content of the commercial.

The Panel also notes the contrast between this Night Exchange commercial and an infomercial that was previously examined by the Ontario Regional Panel.¹ In that Ontario case, the infomercial was 30 minutes long in duration (as opposed to 30 seconds for The Night Exchange spot) and was considerably more provocative and sexual in terms of the women’s attire, behaviour and language. The Ontario Panel, in that case, concluded that that infomercial was sexually explicit and therefore should not have aired in the middle of the afternoon. With respect to The Night Exchange advertisement, the Specialty Services Panel finds no breach of Clause 10(f) of the *CAB Code of Ethics* for its broadcast between 1:30 and 2:00 am Eastern Time. In addition, given that the Panel concludes that the ad does not contain sexually explicit material, a broadcast of the ad prior to the Watershed period would also not likely breach the Code, except under the circumstances described below.

Scheduling of Advertisements during Children’s Programming

Under the Scheduling provisions of the *CAB Code of Ethics* and *Violence Code*, advertisements and promotional spots either do or do not contain material intended exclusively for adult audiences. Those that do can only be broadcast during the Watershed period of 9:00 pm to 6:00 am (in *all* time zones – the Panel reminds single-feed specialty services that the “exception” to the time zone rule whereby the broadcast hour is assessed based on the time zone of origination does *not* apply to ads and promos) and those that do not can be broadcast at any time of day. Ads and promos

are not subject to the multi-levelled rating systems as programs are and there is no graduated Watershed hour in Canada. The CBSC has established in a previous decision² that the theoretical rating “level” for an ad or promo need not precisely match the rating level of the program during which it is shown. The ad or promo either is or is not acceptable for broadcast before the Watershed period, regardless of the nature of the content of the program. There are, then, effectively two categories for advertisements and promos: those that are intended exclusively for adults and those that are not.

That being said, a third category is suggested by the existence of Clause 13 and the possible extension of Clause 4 of the *CAB Code of Ethics* to advertisements. This third category is advertisements and promos that are acceptable at any time of day *except during programming specifically targeted to children*. Clause 13 relates specifically to advertising and mentions “prevailing community standards of tolerability” as well as using an “appropriate selling message” and placing it during the “best possible programming”. Clause 4 refers only to children’s *programs* in its proscription to “reflect the moral and ethical standards of contemporary Canadian society”, but it would be logical to extend the principles of Clause 4 to the other programming elements that surround children’s programs.

In fact, the CBSC did make such an extension in a case involving the scheduling of three violent advertisements during children’s programs broadcast in the morning and afternoon.³ The Quebec Regional Panel found that two of the spots contained violent scenes intended exclusively for adults and so should only have been broadcast after 9:00 pm. With respect to the third spot, the Panel concluded that it was not so violent as to constitute material intended exclusively for adults, but that the station violated the Children’s Programming article of the *CAB Violence Code* for airing the commercial during children’s programming. Although it was the *CAB Violence Code* that was applicable in that Quebec case, the National Specialty Services Panel considers it reasonable that the equivalent children’s programming and scheduling clauses could be applied in a parallel manner to advertisements involving sexual content, coarse language or other mature content.

All this is to say that broadcasters must be mindful of the requirements of Clauses 4 and 13 when broadcasting advertisements during programs for children. The Panel considers that an advertisement for an adult telephone line (particularly one that directly *invites* viewers to “call now”) broadcast during a program targeted at children does offend “prevailing community standards of tolerability” and is not the “best possible programming” chosen for that type of message.

A Complicating Factor: The Scheduling of this Episode of *Batman*

Application of the above-mentioned principle is complicated in this case by Teletoon Retro's scheduling of *Batman: The Animated Series* at 1:30 am Eastern Time. This time slot calls into question the audience age group to which Teletoon Retro was targeting the program. Teletoon Retro is *not* a children's channel; rather, as mentioned above, it provides animated programming from the past geared towards a variety of age groups, including adults. On the one hand, Teletoon Retro put a C8 rating on this episode of *Batman*, which suggests that the service considered the program to be a *children's program* for children eight years old and up. On the other hand, Teletoon Retro scheduled the program at 1:30 am, a time at which it could not reasonably have expected many, if any, children to be viewing.

The issue for the National Specialty Services Panel is whether a program that would normally be defined as a "children's program" based on its content ceases to be defined as such on account of its time slot. The majority of the Panel concludes that this 1:30 am broadcast of *Batman: The Animated Series* cannot be considered a broadcast that was targeted at children. It considers, rather, that when broadcast at such an hour, Teletoon Retro was targeting the program at adults who may have an interest in animation, comic books, action heroes, etc.

The CBSC recognizes that viewers can and do record programs at all hours to watch at times that are more convenient for them; however, neither the CBSC nor the broadcasters have any control over this activity. Broadcasters are only required to abide by the scheduling rules set out in the Codes. Those rules allow for the broadcast of adult-oriented advertisements and promos between the hours of 9:00 pm and 6:00 am. The majority of this Panel considers that viewers need to be aware that, between those hours, they may encounter programming material intended exclusively for adult audiences. The onus is on viewers to take the necessary precautions when watching or recording programs that are broadcast within that time period, regardless of the nature or rating of the actual program. The majority of the Panel thus finds that Teletoon Retro was entitled to broadcast The Night Exchange advertisement at 1:30 am during *Batman* and no Code violation has occurred.

Dissent of M. Bulgutch and D. Ward

We disagree with the majority. In our view, a children's program does not cease to be a children's program simply because it is broadcast between 9:00 pm and 6:00 am. This is all the more so true when the *broadcaster itself* has rated the program C or C8 and has thus effectively declared the target audience to be a child audience. Canadian broadcasters established the rating system to provide audience members with information about the intended audience age group and its compatibility with blocking

technology has been promoted as a tool for viewers to regulate the programming that enters their homes. To declare that a program's rating is meaningless between the hours of 9:00 pm and 6:00 am is illogical. Moreover, it does a disservice to those viewers who have taken the time to actually use their V-chips or other blocking technology. For example, if a viewer has set his/her television filter to allow only programs that fall into a C or C8 category and block all other levels, that viewer should feel assured that *no* programming that would be inappropriate for children to see (be it a program, commercial, promotional spot or other interstitial material) will enter his/her home *at any time of day*.

We, therefore, would find Teletoon Retro in violation of Clauses 4 and 13 of the *CAB Code of Ethics* for broadcasting The Night Exchange advertisement during a children's program.

Broadcaster Responsiveness

In all CBSC decisions, the Panels assess the broadcaster's response to the complainant. The broadcaster certainly need not agree with the complainant's position, but it must respond in a courteous, thoughtful and thorough manner. In this case, Teletoon Retro provided such a response to the complainant before he contacted the CBSC and an even lengthier reply once the CBSC was involved. Both responses explained Teletoon Retro's view of the issue. Teletoon Retro has clearly met its obligations of responsiveness and nothing further is required in this regard in this instance.

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.

¹ *Sun TV (CKXT-TV) re an infomercial for a telephone sex line* (CBSC Decision 06/07-0244, January 9, 2007)

² *CKCK-TV re Promos for The Sopranos and an Advertisement for The Watcher* (CBSC Decision 00/01-0058, August 20, 2001)

³ *TQS re Scheduling of Advertisements and Promos* (CBSC Decision 98/99-0212+, June 23, 1999)

APPENDIX

CBSC Decision 10/11-1669 Teletoon Retro re an advertisement for The Night Exchange during *Batman: The Animated Series*

The Complaint

The CRTC forwarded to the CBSC the following complaint dated May 13:

I am very concerned about some of the advertisements that are shown during the *Batman: The Animated Series* on the network Teletoon Retro. The advertisements are for the "Night Exchange", which is an adult chat line. I contacted the network, and they responded by saying that:

"Ads considered to contain mature content, such as the Night Exchange chat-line commercial you refer to in your email, are recommended for broadcast post-9 pm. TELETOON Retro only has one broadcast feed from Toronto to serve a national audience and broadcasts the Night Exchange commercials exclusively after 12 am ET and 9 pm PT, in accordance with all CBSC guidelines."

With today's technology, the issue is not what time the show is broadcast, but is the advertising content appropriate for the rating of the show. I PVR this show for my children and would like this type of advertising removed from a show that is rated for children!

I have never lodged a complaint with the CRTC, but this is unacceptable to have adult themes broadcast during a children's animated television show.

The CBSC informed the complainant that he would need to provide a specific date and time of broadcast in order for the CBSC to pursue his complaint. He provided that information on May 17:

Thank you for taking the time to follow up on this issue. The commercial for "The Night Exchange" airs regularly during the airing of *Batman: The Animated Series*. The last episode I saw this commercial [in] was aired on May 16, 2011 approximately eleven minutes into the show, but I believe the commercial is shown during every broadcast. The television show is programmed to run daily at 11:30 pm local time on Teletoon Retro.

I recognize that the time of the broadcast is late, but the content of the commercials is not appropriate for a children's show regardless of the broadcast time. My children do not watch this show at the time it is aired, but PVR every episode to watch at their convenience. As a parent, I make every effort to make sure my children watch television shows that are age appropriate. I should not have to scrutinize the advertisements that are broadcast during a children's show to ensure that they are age suitable as well. I do not believe that advertisements promoting adult chat lines should be televised during a show that is intended for children's viewing.

Broadcaster Response

The broadcaster responded to the complainant on May 24 with the following letter:

We received your complaint through the Canadian Broadcasting Standards Council (CBSC) on May 19, 2011. We thank you for sharing your concerns about a commercial for Night Exchange airing on TELETOON Retro. As per our correspondence through TELETOON's Audience Relations mailbox, we sincerely regret that you and your family were upset by this airing as it is certainly never our intention to offend our viewers. I would like to take this opportunity to reiterate some information about the programming and commercial scheduling on TELETOON Retro.

Batman The Animated Series is a program that appeals to viewers of all ages but in its current programming slot at 1:30 am ET, TELETOON has chosen to cater this program to our mature audience. With new PVR technology we cannot control when our viewers choose to watch our programming. We can only advise them to be aware of the program's original broadcast time as the advertisements are intended for the audience watching at that time.

As mentioned in our previous correspondence, TELETOON Retro is not solely a children's network. It is a 24-hour animation and animation-related station, dedicated to providing a variety of programming for a wide variety of viewers. Although the channel is popular with children and pre-teens, TELETOON Retro presents classic cartoons of the '60s, '70s and '80s which appeal to not only kids, tweens and teens but also adults. Bureau of Broadcast Measurement (BBM) ratings show that, on average, 70% of the channel's viewers are adults.

It is also important to mention again that all commercials broadcast on TELETOON receive clearance by the Telecaster Services of the Television Bureau of Canada. The Telecaster services' function is to review each advertisement message or announcement to ensure it complies with the Telecaster Committee Guidelines, including guidelines for violence, gender portrayal, sexuality, moral, legal and/or ethical issues in modern-day society and broadcast ethics. Ads considered to contain mature content, such as the Night Exchange commercial you refer to in your email, are recommended for broadcast post-9 pm. TELETOON Retro only has one broadcast feed from Toronto to serve a national audience and after verifying our logs, I can confirm that Night Exchange aired after 1:30 am ET and 11:30 pm MDT, during *Batman The Animated Series*, in accordance with all CBSC guidelines.

That said, please know that we take our viewer feedback very seriously and have forwarded your comments to the programming department for their consideration.

Once again, we regret that this commercial has upset you and your family. Thank you again for taking the time to write us. If you have any other comments or questions, please do not hesitate to contact us again.

Additional Correspondence

The complainant filed his Ruling Request on the same day, accompanied by the following note:

The broadcaster has insisted that they are following the guidelines and are doing nothing wrong according to the CBSC. I understand that Teletoon Retro is following the "letter of the law", but they are not using their judgement when placing advertisements of a mature nature

on during a children's television program. The guidelines need to be revisited to catch up with the technology (PVR) in use, to keep this from happening.