

The Investigators

The ABC's program, 'The Investigators' broadcast a story about the Life Be In It Pty Ltd (Life) national franchise operation.

The thrust of the program was that investors lost money on a venture after reading a prospectus inviting them to become distributors of a product which carried the Life name. That prospectus promised marketing and promotional support by a Life company which ultimately was not forthcoming. As a consequence the investors lost their money.

Complaint

The ABA received a complaint that the program was inaccurate in that the ABC presenter had stated that there was no contract between the Life and the manufacturer of the product and that the story was not balanced because the ABC had failed to interview the director of Life's marketing company.

The ABC Code of Practice states:

4(a) Every reasonable effort must be made to ensure that the content of news and current affairs programs is accurate, impartial and balanced.'

4(c) Impartiality does not require editorial staff to be unquestioning; nor should all sides of an issue be devoted the same amount of time.

4(d) Balance will be sought through the presentation, as far as possible, of principle relevant viewpoints on matters of importance. The requirement may not always be reached within a single program or news bulletin, but will be achieved within a reasonable period.

Accuracy

The main point of the segment, and what an ordinary and reasonable viewer would have been able to absorb, was generally accurate. However the factual and legal/contractual matrix was much more complex than was conveyed by the ABC.

In the ABA's view, in order for it to be said that the ABC made 'every reasonable effort' to ensure the accuracy of the matters in the program, it should have explained more clearly the contractual relationship between the parties referred to in the program.

The program contained an inaccuracy: it stated that there was no contract between the manufacturer and Life when in fact there was a contract between those two parties.

Balance

The ABC made a bona fide attempt to interview the director of Life's marketing company and Life's principals. The offer was declined, with the exception that unless certain conditions be met. The ABA found that seeking balance in terms of section 4(c) did not require the ABC to meet those conditions.

Breach

The ABA found a breach of the section 4(a) of the ABC Code of Practice in that every reasonable effort was not made to ensure that 'The Investigator's' program was accurate.

A copy of the Report on Investigation was distributed to the relevant personnel in the ABC and their attention drawn to the ABA's comments relating to the reporting of complex material.

In the ABA's view, although the complaint was justified, in that the program contained one inaccuracy which should reasonably have been avoided, the general thrust of the program was not misleading to the ordinary and reasonable viewer. In view of this and the fact that the program 'The Investigators' is no longer being broadcast the ABA did not require any action to be taken by the ABC requiring it to take action to comply with the code.

Real Life

Complaint

The ABA received a complaint about a broadcast by BTQ 7 Brisbane of the program 'Real Life' between 6.30 p.m. and 7.00 p.m., which is within the General (G) classification time zone. The complainant was concerned that 'scenes showing completely naked women having their breast and other parts of their bodies groped sexually by men were [not] a necessary part of the story' and not appropriate for a G classification zone.

The segment dealt with Gold Coast Councillor Kerry Smith's efforts to remove activities and businesses such as sex shops, strip shows and brothels from the area, and in particular her

attempt to close down the 'Pink Pussycat Floating Strip Show'.

Section 2.3.1 of the FACTS Code states, Current affairs ... programs do not require classification, but when broadcast in a 'G' classification period must comply with Clause 2.6 and 2.7.

Breach

The ABA found a breach of section 2.6 of the code which states, 'current affairs ... may be broadcast in 'G' classification periods, provided that care is exercised in the selection and broadcast of all material.' because:

■ the total duration of shots of naked women broadcast throughout the segment were in excess of what is acceptable in a G classification zone and in excess of what was necessary to convey

to the viewer the nature of the on board entertainment;

■ the depictions of sexual behaviour and nudity in the segment were neither limited nor discreet; and

■ sufficient care was not exercised in the broadcast of the material, taking into account the likely composition of the viewing audience at the time of broadcast.

Section 2.10.2 of the code, which sets out the criteria for material classified G, states,

Depictions of and references to sexual behaviour must be limited and discreet. Discreet portrayal of nudity only when absolutely necessary to the story line or program context.

Whilst the program 'Real Life' does not require classification, the ABA had

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regard to this clause in determining the suitability of the segment in question for broadcast during a G classification zone.

The ABA found a breach of section 2.7 of the code which states,

Licensees may broadcast a news or current affairs program containing visual or aural material which, in the licensee's reasonable opinion, is likely to seriously distress or offend a substantial number of viewers only if there are identifiable public interest reasons for broadcasting the material and if adequate prior warning is given to viewers. (see Clause 2.25)

Nine News

Complaint

The ABA received a complaint about a segment contained in the six o'clock evening news bulletin broadcast by TCN Channel Nine Pty Ltd (Channel Nine). The bulletin contained a news item about a murder victim which used a photograph of the wrong person as the murder victim.

The complainant alleged that the news item breached the following sections of the FACTS Code:

4.3 In broadcasting news and current affairs programs, licensees:

4.3.1 must present factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program;

4.3.2 must not present material in a matter which creates public panic;

4.3.5 must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there are identifiable public interest reasons for the material to be broadcast.

Relevant codes

Also relevant to this matter are the following codes:

1.3. Licensees must endeavour to comply fully with the Code, but a failure to comply will not be a breach of the Code if that failure was due to:

1.3.1 a reasonable mistake;

The ABA did not uphold that part of the complaint referring to sections 4.3.5

because:

■ the program contained visual material which, in the licensee's reasonable opinion was likely to offend a substantial number of viewers; and

■ the extent of the display of nudity and titillation was not warranted in the public interest.

The ABA found a breach of section 4.1.2 of the code is intended to ensure that 'news and current affairs programs are presented with due care, having regard to the likely composition of the viewing audience at the time of broadcast (and, in particular, the presence of

and 4.3.2 of the FACTS Code for the following reasons:

■ whilst Channel Nine had erred in presenting the wrong photograph in the news item, the ABA did not consider this to amount to an invasion of privacy as the broadcast of the photograph of the wrong person did not reveal material relating to that person's personal or private affairs (4.3.5); and

■ the distress caused as a result of the broadcast of the incorrect photograph, while creating anguish for the relatives involved, did not amount to public panic (4.3.2).

Accuracy

The ABA is aware that there are occasions when, in the compilation of news stories, errors are made. These may be due to time constraints, or reliance on information provided by another person involved in an event. However, for a commercial television broadcaster to comply with section 4.3.1 of the FACTS Code, the ABA expects that the news compilation process be thoroughly conducted and that all reasonable steps are taken to ensure the accuracy of an item's visual and audio content.

In this case the correct photograph was pointed out to the news cameraman. However, additional material adjacent to the photograph was also filmed. The ABA expects that, where additional information is gathered, whether it be in the form of pictures or sound, appropriate steps are taken to verify the

children)' because the licensee failed to present the segment in question with due care, having regard to the likely composition of the viewing audience at the time of broadcast and given the nature and frequency of the sequences shot on board the boat.

The network advised that the ABA's report will be circulated to all news directors and 'Today Tonight' producers within the network in order that they be aware of the ABA's decision.



accuracy of the material. Such steps would ensure that correct photograph material is used in the production of a news item.

Reasonable mistake

When determining what constitutes a reasonable mistake pursuant to section 1.3.1 of the FACTS Code, the ABA applied an objective test. The intention of the broadcaster is not determinative. Instead, the ABA considers the circumstances of the particular case and determines whether an ordinary and reasonable broadcaster would have made the mistake. A reasonable broadcaster, when reporting crime such as murder, would be particularly sensitive to the impact of a news item on victims and their families. In this regard, the ABA expects a high degree of care to be exercised in the selection and broadcast of visual images accompanying a news item.

The ABA found that the broadcast of the incorrect photograph failed to comply with section 4.3.1 of the FACTS Code.

The Report of Investigation was circulated in the Channel Nine news room and journalists were instructed to take even greater care in identifying persons accurately and with appropriate sensitivity. ☐