



Federal Communications Commission
Washington, D.C. 20554

February 13, 2006

DA 06-327

Released: February 13, 2006

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Meredith Corporation
WHNS(TV)
1716 Locust Street
Des Moines, IA 50309-3203

Re: Meredith Corporation
WHNS(TV), Greenville, SC
Facility ID No. 72300
File No. BRCT-20040802AKF

Dear Licensee:

This refers to your license renewal application for station WHNS(TV), Greenville, SC.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also reaffirmed and clarified its long-standing policy against "program-length commercials." The Commission defined a "program-length commercial" as "a program associated with a product, in which commercials for that product are aired," and stated that the entire duration of any program-length commercial would be counted as commercial matter for the purpose of the children's television commercial limits. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). In addition, the Commission reiterated its long-standing policy against "host-selling," *i.e.*, "the use of program talent to deliver commercials," including "endorsements or selling by animated cartoon characters as well as 'live' program hosts." *Id.* at 2127 n.147, 6 FCC Rcd at 5097; *see also Action for Children's Television*, 50 FCC 2d 1, 8, 16-17 (1974). The commercial limits became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

On August 2, 2004, you filed the above-referenced license renewal application for station WHNS(TV). In response to Section IV, Question 5 of that application, you certify that, during the previous license term, station WHNS(TV) failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Commission's

Rules. In Exhibit 25 to that application, you indicate that station WHNS(TV) violated the children's television commercial limits and/or policies on four occasions between July 8, 1998, and October 20, 2001. Of those four overages, three were 30 seconds in duration. You attribute the conventional overages to human error and inadvertence and describe corrective measures taken by station WHNS(TV) following these violations.

The fourth incident you report occurred on July 8, 1998, when station WHNS(TV) aired a commercial for a Buena Vista Television video product, "The Spirit of Mickey," during "Quack Pack," a program in which Donald Duck is a character. According to your description, this commercial contained a still image of the VHS box cover of the video. You indicate that an image of Donald Duck is visible on this box cover for approximately two seconds. Other than the appearance of Donald Duck on the box cover, you maintain, there is no relationship between the "Quack Pack" program and the product. For these reasons, you argue that the appearance of Donald Duck on the videotape during the "Quack Pack" program arguably constitutes a host-selling violation rather than a program-length commercial. You state that co-owned television station KPDX(TV), Vancouver, Washington, also aired the "Spirit of Mickey" commercial during the "Quack Pack" program and note that in renewing KPDX(TV)'s license, the then Mass Media Bureau (Bureau) found that the broadcast of this commercial during the "Quack Pack" program constituted a program-length commercial. *Letter to Meredith Corporation (KPDX(TV))*, MMB Admonition dated December 21, 1999 (*Meredith Corporation*). You disagree with the Bureau's conclusion and assert that the advertisement improperly utilized Donald Duck in a host-selling arrangement. By way of explanation for the occurrence in this case, you indicate that Buena Vista Television notified station WHNS(TV) of the potential problem after the close of business on July 7, 1998, and that the station's staff did not view the notification until the start of the business day on July 8, 1998 after the "Quack Pack" program had aired at 8:00 a.m.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Thus, in *Children's Television Programming*, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."¹ 6 FCC Rcd at 2118. Accordingly, in interpreting and applying the Commission's policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults. See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997), *aff'g* 9 FCC Rcd 2547 (MMB 1994).

¹ To avoid being considered a program-length commercial, commercial matter related to a children's program must be separated from that program "by intervening and unrelated program material." *Children's Television Programming (Recon.)*, 6 FCC Rcd at 5099. To prevent confusion, the Commission "specifically note[d] that intervening commercial matter will not suffice as a separation device." *Id.* at 5099 n.89.

With this in mind, we disagree with Meredith Corporation (Meredith) that the broadcast of the commercial for the video “The Spirit of Mickey” during the “Quack Pack” program does not constitute a program-length commercial. Meredith asserts that other than the appearance of Donald Duck on the box, there is no relationship between the “Quack Pack” program and “The Spirit of Mickey” video, and that consequently, the appearance of Donald Duck on the video constitutes a host-selling violation rather than a program-length commercial. However, as we stated in *Meredith Corporation*, “the presence of Donald Duck on the home video cover suggests his appearance in ‘The Spirit of Mickey’ video itself,” and “such a product containing Donald Duck as a character relates to the television program in which Donald Duck also appears as a character.” *Id.* at 3. Moreover, although Meredith contends that an image of Donald Duck is visible on the video appeared for approximately two seconds during the commercial, it is well-established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial. *UTV of San Francisco, Inc. (KBKH-TV)*, 10 FCC Rcd 10986, 10988 (1995); *see also WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”). Based on these circumstances, where there is a clear potential for confusion in the minds of young children, the Commission’s program-length commercial policy is applicable. 12 FCC Rcd at 19506.

Regarding the reasons given for the violation, the fact that the program-length commercial at issue here occurred because the commercial was inserted into the program by the program’s distributor does not absolve Meredith of responsibility for the violation. In this regard, the Commission has consistently held that a licensee’s reliance on a program’s source or producer for compliance with our children’s television rules and policies will not excuse or mitigate violations which do occur. *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (MMB 1995). The reasons Meredith cites for the conventional overages, human error and inadvertence, do not mitigate or excuse the violations. In fact, the Commission has repeatedly rejected human error and inadvertence as bases for excusing violations of the children’s television commercial limits. *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994). Nor do corrective actions which have been taken to prevent subsequent violations of the children’s television rules and policies relieve the licensee of liability for the violations which have occurred. *See, e.g., WHP*

Television, L.P. (WHP-TV), 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

While we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for the violations of the children's television commercial limits rule and policies described in station WHNS(TV)'s renewal application. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at the address listed above, and to, Kevin P. Latek, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau