

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL ASSOCIATION OF  
BROADCASTERS,

Defendant.

Civil Action No. 79-1549

Filed: July 16, 1982

Entered: November 23, 1982

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint herein on June 14, 1979, and Plaintiff and Defendant, National Association of Broadcasters, by their respective attorneys, having each consented to the entry of this Final Judgment, and without this Final Judgment constituting evidence against or admission by Defendant or Plaintiff with respect to any issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony, and without trial or any final adjudication of any issue of fact or law herein, and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and the parties. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II.

As used in this Final Judgment:

"NAB" means the defendant National Association of Broadcasters.

"NAB Television Code" or "Television Code" means the Television Code of the NAB.

"Non-program material" includes, but is not limited to, commercials, promotional announcements, billboards, public service announcements and credits.

"Code subscribers" includes all persons who have subscribed to or agreed to be bound by the provisions of the Television Code.

"Person" means any individual, partnership, firm, association, corporation, or other business or legal entity.

### III.

This Final Judgment shall apply to Defendant, its subsidiaries and affiliates (including without limitation the Code Authority of the NAB) and to Defendant's officers, directors, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For purposes of this Section III, members of Defendant NAB shall not be deemed to be in active concert or participation with NAB solely by virtue of their membership in NAB.

### IV.

Defendant shall immediately cancel and is enjoined from maintaining, promulgating, publishing, distributing, enforcing, monitoring or otherwise requiring or suggesting adherence to Section IX, paragraph 5; Section XIV, paragraphs 1 through 5; and Section XV of the Television Code (twenty-second edition), the enumerated portions of which are attached hereto as Appendix A.

### V.

Defendant is enjoined and restrained from, directly or indirectly, and either unilaterally or in concert with

any other person, adopting, maintaining, promulgating, publishing, distributing, enforcing, monitoring or otherwise requiring or suggesting adherence to, any code, rule, by-law, guideline, standard or other provision limiting or restricting:

(1) the quantity, length or placement of non-program material appearing on broadcast television; or

(2) the number of products or services presented within a single non-program announcement on broadcast television.

Provided, however, that nothing in this Final Judgment shall prohibit:

A. Members of Defendant NAB (including commonly-owned members acting together), from individually and unilaterally adhering to, adopting, instituting or maintaining such policies, practices or limitations with respect to the quantity, length, or placement of non-program material, or the number of products or services presented within a single non-program announcement, as each such member may independently deem appropriate.

B. Defendant NAB and its members from exercising their First Amendment rights of:

(1) jointly advocating, proposing, opposing or discussing with each other legislation concerning any policies, practices or limitations with respect to the quantity, length, or placement of non-program material, or the number of products or services presented within a single non-program announcement;

(2) jointly advocating, proposing, opposing or discussing any rule, regulation, or policy to any federal or state executive or administrative agency or department; or

(3) jointly participating in any proceeding before any such agency or department, concerning such policies, practices or limitations.

VI.

Defendant NAB is ordered:

A. Within thirty days of the date of entry of this Final Judgment to send a copy of this Final Judgment to all NAB members and all Television Code subscribers; and

B. To file with this Court and serve upon Plaintiff an affidavit as to the fact and manner of compliance with subparagraph A of this paragraph. Such affidavit is to be served and filed with the Clerk of the Court within forty-five days of the date of entry of this Final Judgment.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to its principal office, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, regarding any matters relevant to this Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, employees and agents of such Defendant, who may have counsel present, regarding any such matters.

3. **Averaging Concept.** In prime time and all other time, programs of 90 minutes in length or longer, the reasonable averaging of the amount of allowable time for non-program material and/or of the number of allowable interruptions is permitted for the purpose of preserving program continuity in the interests of the viewer. In such situations, one or more 60-minute period(s) may contain more than the allowable amount of non-program material and/or more than the allowable number of interruptions providing the remaining 60-minute period(s) contains appropriately less non-program material and/or fewer interruptions so that, on average, each hour of the program is compliant with applicable Television Code standards. Additionally, when the telecast of live programs of indeterminate length, such as sports programs and on-the-spot news coverage, carries over from one time period to another (e.g., prime time to all other time), allowance will be made for the reasonable overage of non-program material in any given hour of the program providing the total amount of non-program material does not exceed the total allowed for the period of time which the program covers.

4. **Program Interruptions.**

A. **Definition:** A program interruption is any occurrence of non-program material within the main body of the program.

B. In prime time, the number of program interruptions shall not exceed two within any 30-minute program, or four within any 60-minute program. Programs longer than 60 minutes shall be prorated at two interruptions per half hour.

The number of interruptions in 60-minute variety shows shall not exceed five.

C. In all other time, the number of interruptions shall not exceed four within any 30-minute program period.

D. In children's weekend programming time, as defined in Section XIV-2C, the number of program interruptions shall not exceed two within any 30-minute program or four within any 60-minute program.

E. In both prime time and all other time, the following interruption standard shall apply within programs of 15 minutes or less in length:

5-minute program—1 interruption;  
10-minute program—2 interruptions;  
15-minute program—2 interruptions.

F. News, weather, sports and special events programs are exempt from the interruption standards because of the nature of such programs.

5. **Consecutive Announcements.** In both prime time and all other time, no more than five non-program material announcements may be scheduled consecutively within programs by the originating Code subscriber, of which no more than four may be commercial announcements, and no more than three non-program material announcements may be scheduled consecutively during any station break.

Public service announcements are excluded from the consecutive announcement count. The consecutive announcement limitation need not apply in situations in which the number of interruptions in a program has been reduced.

## XV. TIME STANDARDS FOR INDEPENDENT STATIONS

1. Non-program elements shall be considered as all-inclusive, with the exception of required credits, legally required station identifications, and "bumpers." Promotion spots and public service announcements, as well as commercials, are to be considered non-program elements.

2. The allowed time for non-program elements, as defined above, shall not exceed seven minutes in a 30-minute period or multiples thereof in prime time (prime time is defined as any three contiguous hours between 6:00 PM and midnight, local time), or eight minutes in a 30-minute period or multiples thereof during all other times.

3. Where a station does not carry a commercial in a station break between programs, the number of program interruptions shall not exceed four within any 30-minute program, or seven within any 60-minute program, or 10 within any 90-minute program, or 13 in any 120-minute program. Stations which do carry commercials in station breaks between programs shall limit the number of program interruptions to three within any 30-minute program, or six within any 60-minute program, or nine within any 90-minute program, or 12 in any 120-minute program. News, weather, sports, and special events are exempt because of format.

4. Not more than four non-program material announcements, as defined above, shall be scheduled consecutively. An exception may be made only in the case of a program 60 minutes or more in length, when no more than seven non-program elements may be scheduled consecutively by stations who wish to reduce the number of program interruptions.

5. The conditions of paragraphs three and four shall not apply to live sports programs where the program format dictates and limits the number of program interruptions.

*(For children's time standards on independent stations see provisions XIV-2C, 4D under Time Standards for Network-Affiliated Stations.)*

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized employee or representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

The Final Judgment shall remain in effect until ten (10) years from the date of entry.

IX.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

X.

Entry of this Final Judgment is in the public interest.

ENTERED: November 23, 1982

/s/ Judge Harold Greene  
United States District Judge

THE TELEVISION CODE  
National Association of Broadcasters  
(Twenty-Second Edition, July 1981)

IX. PRESENTATION OF ADVERTISING

5. Audience perceptions of clutter. A multiple product announcement is one in which two or more products or services are presented within the framework of a single announcement. A multiple product announcement shall not be scheduled in a unit of time less than 60 seconds, except where integrated so as to appear to the viewer as a single message. A multiple product announcement shall be considered integrated and counted as a single announcement if:

—the products or services are related and interwoven within the framework of the announcement (related products or services shall be defined as those having a common character, purpose and use); and

—the voice(s), setting, background and continuity are used consistently throughout so as to appear to the viewer as a single message.

Multiple product announcements of 60 seconds in length or longer not meeting this definition of integration shall be counted as two or more announcements under standard XIV-5 of the Code. This provision shall not apply to retail or service establishments.

XIV. TIME STANDARDS FOR  
NETWORK-AFFILIATED STATIONS

1. Non-Program Material Definition. Non-program material in both prime time and all other time includes billboards, commercials and promotional announcements.

Non-program material also includes:

A. In programs of 90 minutes in length or less, credits in excess of 30 seconds per program, except in feature films. In no event should credits exceed 40 seconds in such programs.

The 40-second limitation on credits shall not apply, however, in any situation governed by a contract entered into before October 1, 1971.

B. In programs longer than 90 minutes, credits in excess of 50 seconds per program, except in feature films. In no event should credits exceed 60 seconds in such programs.

C. Credits in excess of 70 seconds per program for the following categories exclusive of feature films: Award or variety programs two hours in length or longer; movies three hours in length or longer, and any program two hours in length or longer whose production involves the use of two or more production units working in different locations. In no event should credits exceed 80 seconds in such programs.

The only exclusions from the foregoing definition of non-program material are: (1) public service announcements; (2) voice-over credits program information announcements not to exceed 30 seconds; (3) scheduling information regarding unusual special news programs; (4) scheduling information presented in special programs of indeterminate length (e.g., special news, sports or other special events programs) regarding an immediately upcoming program(s) whose regular broadcast time has been affected by the indeterminate length program, and (5) promotional informational material used to fulfill time requirements of certain formats two hours in length or longer such as theatrical length motion pictures, mini-series, made-for-television movies, occasional special long-length versions of series programs. In such situations, the broadcaster may, no more than 12 times per year, and at his/her discretion, utilize promotional/informational material to fill the time requirement provided such material does not exceed an average of two minutes per hour. The limit on the amount of such material per program shall be four minutes and, when used, the material shall be generic in nature.

2. Allowable Time for Non-Program Material.

A. Prime Time.

(1) Prime time is a continuous period of not less than three consecutive hours per broadcast day as designated by the station between the hours of 6:00 PM and midnight.

(2) In prime time on network-affiliated stations, the amount of non-program material shall not exceed nine minutes 30 seconds in any 60-minute period. When deemed necessary by the broadcaster, an additional 30 seconds per hour may be used for promotional announcements.

B. All Other Time. In all other time, non-program material shall not exceed 16 minutes in any 60-minute period.

C. Children's Programming Time. Children's programming time is defined as those hours other than prime time in which programs initially designed primarily for children under 12 years of age are scheduled.

Within this time period on Saturday and Sunday, non-program material shall not exceed nine minutes 30 seconds in any 60-minute period.

Within this time period on Monday through Friday, non-program material shall not exceed 12 minutes in any 60-minute period.