

**TRUTHFULNESS IN
PROGRAMMING AND ADVERTISING:
What Every Broadcaster Should Know**

By [Gregg P. Skall](#)

Recently, several broadcasters have inquired as to the problems involved in airing false and/or misleading information in its programming and advertisements. The problem has crystallized most recently with advertising copy furnished by some advertising agencies misrepresenting an event as being broadcast live when in fact it was prerecorded, or in some cases, was actually a staged event. The more famous cases in this area were decided some time ago. Therefore, I thought a brief review of the relevant case law and FCC policies would be useful.

Generally, a broadcaster is not legally responsible for the false or misleading information about a product contained in advertisements aired on its station, unless the broadcaster actually produced the advertisement. The FCC does not hold a broadcaster responsible for advertisements that are false or misleading, considering the matter to be within the province of the Federal Trade Commission. If an advertisement is false or misleading, the Federal Trade Commission may investigate the party placing the advertisement, but, generally, would not otherwise hold the broadcaster liable.

While the government would otherwise relieve the broadcaster from liability, the listening public may not be so forgiving. The audience expects that the advertisements aired on a station will be truthful, and will not be misleading. As such, should a station consistently provide false and misleading information, the audience's trust in the station, and eventually its support, will steadily disappear.

Moreover, the FCC does weigh in with regard to false and/or misleading programming of the station. Specifically, the Commission will consider complaints of false or misleading programming when reviewing a station's license renewal application. Many of these cases are resolved by a forfeiture proceeding, while in a few extreme cases, the license has been revoked.

For example, the Commission refused to renew the license of a station which aired false and misleading statements relating to station-run contests. The contest was centered on the public's ability to locate a morning personality who was to be "wandering" around the local community, while the station broadcasted hints as to his location. However, the announcer knew that the personality was not wandering around the town, and instead, was at an inaccessible point. Based on repeated instances of similar problems with station-run contests, the Commission found that the licensee had broadcasted false and misleading information, and thus, was not fit to hold a broadcast license, and denied its renewal application.

In another instance, the Commission focused on a radio station's practice of making false temperature reports for suburban communities in Denver. The Commission found that the licensee had made false and misleading newscasts by increasing the temperature for those communities east of Denver, and decreasing the temperature for those communities west of Denver, rather than take the trouble to actually measure the temperature in those suburban communities. In fact, the broadcaster had no knowledge of what the actual temperature

was in those communities but was relying on guesstimates based on historical averages. The licensee ceased this practice after repeated complaints from its news staff.

Perhaps the most storied case of false and misleading programming was brought about during the 1968 Democratic National Convention in Chicago, Illinois. Several complaints were filed regarding the "staging" of news programming by the three major networks. Specifically, the complaints alleged that the networks' news staff was encouraging conflicts between protestors and police, and that on several occasions, news staff had staged interviews with "injured" persons who in fact were not injured, but merely acting as such for the camera.

The Commission responded to these complaints by warning the networks and all other broadcasters that the Commission will review such staging complaints during the license renewal period if there is evidence that the licensee directed its staff to engage in the "staging" activities. If such a finding can be made, then the license renewal application may be denied.

In essence, therefore, each licensee is reminded to closely monitor the programming broadcasted by its stations. While the Commission may tolerate the licensee's ignorance of sporadic "staging" by its staff, it will not tolerate a repeated failure of the licensee to monitor and supervise its staff. It has stated forcefully that it a broadcaster's *knowing* misrepresentations or staging of events represented to be real or live could result in a renewal application being designated for hearing. The licensee must remember that it has substantial responsibility to provide its audience truthful programming and advertisements, and that the failure to live up to this responsibility may result in substantial fines or even revocation of its license.