

Federal Court



Cour fédérale

Date: 20180418

Docket: T-1483-16

Citation: 2018 FC 413

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 18, 2018

PRESENT: The Honourable Mr. Justice Bell

Docket: T-1483-16

BETWEEN:

SERDY VIDEO II INC.

Applicant

and

MINISTER OF CANADIAN HERITAGE

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of the decision made on behalf of the Minister of Canadian Heritage [Minister] and communicated to the applicant, Serdy Vidéo II Inc. [Serdy], in a letter dated August 12, 2016 [Decision]. The Decision revoked the Canadian film or video production certificate [Part A certificate] that was issued by the Minister on October 30, 2013,

for the production *Villas de rêves*, a certificate through which this production was recognized as a Canadian film or video production entitled to a tax credit within the meaning of section 125.4 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [ITA] and section 1106 of the *Income Tax Regulations*, C.R.C., c. 945 [Regulations]. The Minister revoked the Part A certificate on the grounds that *Villas de rêves* constituted “advertising”, which is an excluded production within the meaning of subparagraph 1106(1)(b)(ix) of the Regulations.

II. Facts

[2] In order to promote the creation of Canadian productions and the growth of the Canadian film and video sector, Canada offers tax credits to Canadian producers. One of those tax credits, the Canadian Film or Video Production Tax Credit [CPTC], entitles eligible productions to a refundable tax credit equal to 25% of the qualified labour expenditure.

[3] Access to the CPTC is governed by section 125.4 of the ITA and section 1106 of the Regulations. Under subparagraph 125.4(3)(a)(i) of the ITA, a corporation must obtain a Canadian film or video production certificate [certificate] in order to qualify for the CPTC. The certificate is issued by the Minister in respect of a production if the production is a “Canadian film or video production” within the meaning of the Regulations.

[4] The definition of “Canadian film or video production” set out in the Regulations specifies that certain types of productions are not Canadian film or video productions. Those excluded productions include in particular productions that constitute “advertising”. Excluded productions do not qualify for a certificate and, therefore, do not have access to the CPTC.

[5] Section 125.4 of the ITA gives the Minister the authority to decide whether to issue a certificate and to revoke such certificates if it appears that the production in question is not a Canadian film or video production. Therefore, it falls to the Minister to assess the CPTC eligibility criteria. The Minister bases this decision on information provided by the producer and on the recommendation from the Canadian Audio-Visual Certification Office [CAVCO], a unit of the Department of Canadian Heritage, which administers the CPTC program in partnership with the Canada Revenue Agency.

[6] CAVCO's recommendations are made by officers who are generally the first line of analysis of and communication with producers and whose recommendations are subsequently reviewed by a supervisor. Officers are supported by two committees: the Advisory Committee, which is made up of senior CAVCO analysts and has the mandate to assist the officers, and the Compliance Committee, which is made up of senior analysts and managers and is mandated to review files.

[7] To receive the CPTC, producers must apply to CAVCO for the Canadian Film or Video Production Tax Credit in order to receive a Part A certificate and a Certificate of Completion [Part B certificate] from the Minister. The Part A certificate can be obtained before a production is begun or completed, while the Part B certificate is issued only after the production is complete and the Minister has been able to view it.

[8] In 2013, Serdy applied to CAVCO for the Canadian Film or Video Production Tax Credit for the production *Villas de rêves* in order to obtain a Part A certificate [application].

[9] The application described the *Villas de rêves* production as taking television audiences to the Caribbean in search of an oasis in order to make their wildest dreams a reality: from Jamaica to the Turks and Caicos Islands, passing by Saint Martin, Saint-Barthélemy, Anguilla and the British Virgin Islands, viewers will discover luxurious villas that are available to rent and will have the impression that they can live like royalty there.

[10] In October 2013, CAVCO issued a Part A certificate, confirming that the *Villas de rêves* production is a Canadian production, according to the information submitted, within the meaning of section 125.4 of the ITA and section 1106 of the Regulations. The certificate included a clause to the effect that it was granted under a condition precedent that the applicant obtain a Part B certificate.

[11] On the basis of that Part A certificate, Serdy filmed and produced the *Villas de rêves* production. Once production was complete, in 2014, Serdy applied to CAVCO for the Canadian Film or Video Production Tax Credit for the production in order to obtain a Part B certificate. Serdy also sent a DVD copy of the production for CAVCO to view.

[12] In April 2015, the officer responsible for reviewing the file recommended the certification of the *Villas de rêves* production under Part B. In compliance with standard practice, that decision was reviewed by a supervisor. After viewing the production and reading the officer's initial recommendation, the supervisor responsible raised some doubts as to the production's eligibility, given that he found that it appeared to be advertising, a genre that is excluded by the Regulations.

[13] Between June 17 and July 9, 2015, the members of CAVCO's Advisory Committee met and confirmed that the production in question did constitute advertising.

[14] On June 25, 2015, the file was brought to the attention of the Compliance Committee. After viewing the production, the committee members confirmed their opinion that the production constituted advertising and that it was therefore excluded from the CPTC.

[15] On December 2, 2015, CAVCO sent Serdy a letter entitled [TRANSLATION] "Notice of Revocation", informing Serdy that its review of the file had revealed that the production *Villas de rêves* was "advertising", which is excluded within the meaning of subparagraph 1106(1)(b)(ix) of the Regulations. In an appendix to the letter, CAVCO noted the problematic aspects of the episodes it viewed, particularly the presence on the screen of the logos of the companies that rent out the villas and the level of detail provided by the program's host regarding the features and services offered with the villas, including comments on the reasonable rental prices and the services included in the price. In that letter, CAVCO invited Serdy to submit any new information that could influence the file's assessment.

[16] On January 26, 2016, Serdy sent CAVCO a reply to the Notice of Revocation in which it argued that the production company received no monetary gain from the owners of the villas presented in the series and that the on-screen logos were part of a sponsorship agreement intended to give the rental companies visibility. In exchange, Serdy did not have to pay to use the filming locations.

[17] On February 18, 2016, the members of the Compliance Committee met to assess the file. The Compliance Committee upheld its decision that the production was in an excluded category. Four months later, the Compliance Committee met again and confirmed its position regarding the production's eligibility. CAVCO's final recommendation was subsequently sent to the Minister on August 10, 2016, and she approved it. Consequently, on August 12, 2016, CAVCO sent Serdy a letter for and on behalf of the Minister entitled "Notice of Revocation" to notify Serdy that the production *Villas de rêves* was an excluded production within the meaning of subparagraph 1106(1)(b)(ix) of the Regulations and that the Part A certificate issued for the production was henceforth revoked. That Decision is the subject of this application for judicial review.

III. Decision

[18] The Decision states that *Villas de rêves* is "advertising", which is an excluded production within the meaning of subparagraph 1106(1)(b)(ix) of the Regulations. It asserts that each episode of *Villas de rêves* that had been submitted to CAVCO for viewing is composed entirely of video images that promote a particular vacation destination, with everything that the location has to offer vacationers during their stay, and that the primary objective of the production is therefore to promote the goods, services or activities offered by the various tourist destinations. Thus, the production has all the characteristics of an infomercial; the aspects aimed at selling or promoting the services of the seaside resorts form a whole that is practically indistinguishable from the production's information content. To make this finding, the Decision was based on the definition of "advertising" in the CPTC Program Guidelines, published by CAVCO on April 2, 2012, in accordance with subsection 125.4(7) of the ITA [Guidelines].

[19] The Decision states the following: [TRANSLATION] “Thus, any production that, like VILLAS DE RÊVES, (I) offers i) a detailed description of the services, activities or products of any provider; ii) a detailed description of the main features of the services, activities or products of the provider in question; and iii) laudatory comments regarding those services, activities or products of such a provider, is considered by CAVCO to be a production that constitutes ‘advertising,’ a category that is ineligible for the CPTC. This description is . . . based on the intrinsic characteristics of the production as they were noted, generally during the viewing of the episodes submitted by the producer”.

IV. Relevant provisions

[20] The relevant provision of the ITA is section 125.4, particularly subsections (1), (3), (6) and (7). The relevant provision of the Regulations is section 1106, particularly subsections (1) and (4). Lastly, the definition of “advertising” provided on page 56 of the Guidelines is relevant. Those provisions are listed in Appendix A.

V. Issues

[21] As part of this application for judicial review, the parties raise three issues, namely:

1. What is the applicable standard of review in this case?
2. Were the requirements of procedural fairness met?
3. Is the Minister’s decision reasonable?

VI. Analysis

A. *Preliminary issue on the admissibility of evidence*

[22] Before analyzing the above-mentioned issues, it is important to consider the respondent's preliminary motion. The respondent submits that Serdy filed evidence that is inadmissible, since it was not before the Minister when she made the Decision, or is irrelevant and contains opinions or arguments. The respondent is asking the Court to remove that evidence from the record. The disputed evidence includes:

- The affidavit from Maryse Rouillard and its exhibits; and
- Paragraphs 42–45, 50, 55–57 and 59–60 of the affidavit from Sébastien Arsenault, signed on October 20, 2016, as well as the exhibits that support those paragraphs: SA-13 and SA-15.

[23] In the affidavit from Maryse Rouillard and its exhibits, Ms. Rouillard, the president of a production company that is not a party to the case, filed DVDs containing episodes of productions other than that which is the subject of this application, along with copies of exchanges that took place with CAVCO regarding those productions in the context of CPTC applications. At paragraphs 42–45, 50, 55–57 and 59–60 and in exhibits SA-13 and SA-15 of Sébastien Arsenault's affidavit, Mr. Arsenault, the president of Serdy, filed various pieces of evidence concerning the understanding of the nature of the *Villas de rêves* production and on his understanding of CAVCO's past practices in other CPTC files, along with a dictionary definition and a public notice from CAVCO that were not before the Minister when she made the Decision.

[24] It is settled law that an application for judicial review may only proceed on the basis of the evidentiary record that was before the decision-maker at the time of the decision, subject to some exceptions (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, [2012] F.C.J. No. 93, paragraphs 19–20). It has also been decided that the fate of other productions, along with the producer’s opinion on the similarities between its production and a certified one, could not create legitimate expectations (*Canada (Attorney General) v. Zone3-XXXVI Inc.* 2016 FCA 242, [2016] F.C.J. No. 1049 at paragraph 49 [*Zone3*]). It has also been established that the Court may strike affidavits, or portions of them, where they are abusive or clearly irrelevant or where they contain opinion, argument or legal conclusions (*Sharma v. Canadian Pacific Railway*, 2016 FC 135, [2016] F.C.J. No. 117 at paragraph 19).

[25] In applying this case law, I found at the start of the hearing that exhibits MR-1 and MR-4 of Ms. Rouillard’s affidavit will be struck from the record. The rest of her affidavit is admissible, since it provides the background of the process for challenging a notice of revocation and of certain circumstances in which the Minister had previously changed a decision. With respect to the affidavit from Sébastien Arsenault, I have struck paragraphs 42, 45, 56 and 60 from the record, since those paragraphs contain an opinion or argument.

B. *Standard of review*

[26] The parties agree on the standards of review that apply in this case. With respect to Serdy’s arguments concerning procedural fairness, they should be reviewed on the correctness standard (*Zone3* at paragraph 27).

[27] As for the Minister's Decision as to whether to issue a film or video production certificate, it must be reviewed under the reasonableness standard (*Zone3* at paragraph 26). These decisions raise questions of mixed fact and of law. The role of the reviewing judge is therefore to assess the justification of the decision, the transparency and the intelligibility of the decision-making process, and to ensure that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47).

C. *Were the requirements of procedural fairness met?*

[28] In *Zone3*, the Federal Court of Appeal established that a decision by the Minister as to whether to issue a film or video production certificate is purely administrative in nature and has none of the characteristics of a quasi-judicial procedure (*Zone3* at paragraph 44). Furthermore, it established that the interest at issue is purely an economic one (*Zone3* at paragraph 44). For those reasons, the Court found that the requirements of procedural fairness are minimal; the only duty of fairness that falls to the Minister in the context of a CPTC application is to send a notice of denial and to allow the opportunity to provide additional information that might change the assessment of the application (*Zone3* at paragraph 46). Those requirements were satisfied.

[29] As previously mentioned, CAVCO sent Serdy a letter entitled [TRANSLATION] "Notice of Revocation" on December 2, 2015. That letter informed Serdy that the review of its file had revealed that the production *Villas de rêves* was "advertising", which is excluded within the meaning of subparagraph 1106(1)(b)(ix) of the Regulations. In an appendix to the letter, CAVCO very specifically listed the problematic aspects of the episodes that were viewed.

CAVCO invited Serdy to submit any new information that could influence the file's assessment. Serdy's reply was sent to CAVCO on January 26, 2016, and was considered by the members of the Compliance Committee during two meetings, on February 18, 2016, and on June 29, 2016.

[30] Although I have found that the Minister satisfied the requirements of procedural fairness, I will respond to Serdy's submissions. Serdy alleges that it had a legitimate expectation that its production would be certified based on having been issued a Part A certificate and on the fate of other productions. However, issuing a Part A certificate does not in any way guarantee that a Part B certificate will be issued. In fact, the Part A certificate contains an explicitly stated condition precedent that requires the production to obtain a Part B certificate after its completion. Alleging that Serdy had legitimate expectations as a result of having received a Part A certificate would entirely invalidate the need for this second step after viewing the production. With respect to the "legitimate expectations" based on the fate of other productions, the Federal Court of Appeal clearly rejected that argument (*Canada (Attorney General) v. Zone3-XXXVI Inc.*, 2016 FCA 242, [2016] F.C.J. No. 1049 at paragraph 49 [*Zone3*]).

[31] Whatever the case may be, the doctrine of legitimate expectations does not in any way give rise to a particular decision, since it concerns the decision-making process and not the decision itself (*Zone3* at paragraph 45). It is used to determine what procedures are required by the duty of procedural fairness and not what decision should be rendered (*Baker v. Canada (Minister of Immigration and Citizenship)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 at paragraph 26).

[32] Lastly, Serdy submits that its right to procedural fairness was violated because CAVCO deviated from its past practices regarding its interpretation of the word “advertising” without any justification and without communication with members of the industry. Serdy appears to take the wording of the Decision to mean that CAVCO changed its interpretation of the word “advertising”. With respect, CAVCO simply replied to Serdy’s prior submissions by using the same words as Serdy did in its submissions. Despite the words that were used, the Decision is based on the definition of “advertising” that is provided in the Guidelines. There was no change to the criteria without notifying the members of the industry.

[33] In summary, the minimal requirements of procedural fairness that fall to the Minister in the context of a CPTC application were satisfied. There is no need to allow the application for judicial review on the grounds of a breach of the duty of procedural fairness.

D. *Is the Minister’s decision reasonable?*

[34] As detailed in the Notice of Revocation, as well as in the Decision, each episode of *Villas de rêves* that had been submitted to CAVCO for viewing is composed entirely of video images that promote vacation destinations, with everything that the locations have to offer vacationers during their stay. Those video images include the on-screen presence of the logos of the companies that rent the villas to offer them visibility, in accordance with a sponsorship agreement. The video images are combined with the narration of a host who describes the villas down to the slightest detail in a laudatory manner, going so far as to comment on the reasonable rental price, along with the services included in the price of rent (housekeeping, option for a private chef, etc.). Therefore, I am of the view that it is reasonable to find that the production is

“advertising” that offers entertainment or information combined with the promotion of goods or services in an almost indistinguishable manner.

[35] Serdy submits that the Decision is unreasonable, because the interpretation of “advertising” that was used in the Decision is inconsistent with the ordinary meaning of the term and, therefore, with the ITA and the Regulations. As stipulated in the ITA and the Regulations, it is on the Minister that Parliament has conferred the role of defining the concepts that are important to designating a Canadian film or video production in the Guidelines. The Minister therefore acts lawfully by using the definition set out in the Guidelines in order to determine what constitutes a Canadian film or video production; this is not inconsistent with the ITA or the Regulations. However, I am not satisfied that the interpretation used is inconsistent with the ordinary meaning of the word. Certain definitions, particularly the one in the Larousse dictionary cited by the respondent, are consistent with the interpretation of “advertising” that was used in the Decision.

[36] Moreover, the interpretation of the concept of “advertising” is within the Minister’s expertise. Therefore, it is generally not for the Court to intervene to apply a different interpretation (*Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650 at paragraph 104; *Zone3* at paragraph 38).

[37] In light of the foregoing and after having viewed episodes of *Villas de rêves* myself during the hearing, I concur with the respondent that it is clear that the Decision is reasonable. There is a rational basis for the Decision that *Villas de rêves* is “advertising”, which is excluded

under the ITA and the Regulations. In fact, even using the definition of “advertising” proposed by Serdy, namely [TRANSLATION] “the presence of a sponsor that benefits from and pays for the advertising”, its production would be excluded. Serdy admits to having a sponsorship agreement with certain renters, and their logos benefited from the visibility given to them by the production. The Decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The application for judicial review should not be allowed.

VII. Conclusion

[38] For all these reasons, the application for judicial review is dismissed, with costs of \$5,000.00, including taxes and disbursements, payable by the applicant in favour of the respondent.

JUDGMENT in T-1483-16

THE COURT ORDERS that the application for judicial review is dismissed, with costs of \$5,000.00, including taxes and disbursements, payable by the applicant in favour of the respondent.

“B. Richard Bell”

Judge

Certified true translation
This 17th day of February 2020

Lionbridge

APPENDIX A

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.):

Definitions

125.4 (1) The definitions in this subsection apply in this section.

[...]

Canadian film or video production has the meaning assigned by regulation.
(*production cinématographique ou magnétoscopique canadienne*)

Canadian film or video production certificate means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that, except where the production is a treaty co-production (as defined in subsection 1106(3) of the Income Tax Regulations), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

a) qualified corporation that owns or owned an

Définitions

125.4 (1) Les définitions qui suivent s'appliquent au présent article.

certificat de production cinématographique ou magnétoscopique canadienne Certificat délivré par le ministre du Patrimoine canadien relativement à une production et attestant qu'il s'agit d'une production cinématographique ou magnétoscopique canadienne relativement à laquelle ce ministre est convaincu que, sauf s'il s'agit d'une coproduction prévue par un accord, au sens du paragraphe 1106(3) du Règlement de l'impôt sur le revenu, une part acceptable des recettes provenant de l'exploitation de la production sur les marchés étrangers est retenue, selon les modalités d'une convention, par :

a) une société admissible qui est ou était propriétaire d'un intérêt ou, pour

interest in, or for civil law
a right in, the production;

l'application du droit civil,
d'un droit sur la production;

b) a prescribed taxable
Canadian corporation
related to the qualified
corporation; or

b) une société canadienne
imposable visée par
règlement qui est lié à la
société admissible;

c) any combination of
corporations described in
paragraph (a) or (b).
(*certificat de production
cinématographique ou
magnétoscopique
canadienne*)

c) toute combinaison de
sociétés visées aux alinéas
a) ou b). (*Canadian film or
video production
certificate*)

[...]

[...]

**production
cinématographique ou
magnétoscopique canadienne**
S'entend au sens du *Règlement
de l'impôt sur le revenu.*
(*Canadian film or video
production*)

[...]

Tax Credit

Crédit d'impôt

(3) Where

(3) La société qui est une
société admissible pour une
année d'imposition est réputée
avoir payé, à la date
d'exigibilité du solde qui lui
est applicable pour l'année, un
montant au titre de son impôt
payable pour l'année en vertu
de la présente partie égal à 25
% de sa dépense de main-
d'oeuvre admissible pour
l'année relativement à une
production cinématographique
ou magnétoscopique
canadienne, si les conditions
suivantes sont réunies

a) a qualified corporation for a taxation year files with its return of income for the year

a) la société joint les documents suivants à la déclaration de revenu qu'elle produit pour l'année :

i. a Canadian film or video production certificate issued in respect of a Canadian film or video production of the corporation,

i) le certificat de production cinématographique ou magnétoscopique canadienne délivré relativement à la production,

ii. a prescribed form containing prescribed information, and

ii) un formulaire prescrit contenant les renseignements prescrits,

iii. each other document prescribed in respect of the production, and

iii) tout autre document visé par règlement relativement à la production;

b) the principal filming or taping of the production began before the end of the year,

b) les principaux travaux de prise de vue ou d'enregistrement de la production ont commencé avant la fin de l'année.

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

Revocation of certificate

Révocation d'un certificat

(6) If an omission or incorrect statement was made for the purpose of obtaining a

(6) Si une omission ou un énoncé inexact a été fait en vue d'obtenir un certificat de

Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production,

production cinématographique ou magnétoscopique canadienne relativement à une production ou s'il ne s'agit pas d'une production cinématographique ou magnétoscopique canadienne, les règles ci-après s'appliquent :

a) the Minister of Canadian Heritage may

a) le ministre du Patrimoine canadien peut :

i. revoke the certificate, or

i. soit révoquer le certificat,

ii. if the certificate was issued in respect of productions included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

ii. soit, si le certificat a été délivré relativement à des productions faisant partie d'une série télévisuelle à épisodes, révoquer le certificat relatif à un ou plusieurs épisodes de la série;

b) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

b) il est entendu que, pour l'application du présent article, les dépenses et le coût de production relatifs à des productions faisant partie d'une série télévisuelle à épisodes qui se rapportent à un épisode de la série relativement auquel un certificat a été révoqué ne sont pas attribuables à une production cinématographique ou

magnétoscopique
canadienne;

c) for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

c) pour l'application du sous-alinéa (3)a)(i), le certificat révoqué est réputé ne jamais avoir été délivré.

Guidelines

(7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances under which the conditions in the definition Canadian film or video production certificate in subsection (1) are satisfied. For greater certainty, those guidelines are not statutory instruments as defined in the *Statutory Instruments Act*.

Lignes directrices

(7) Le ministre du Patrimoine canadien publie des lignes directrices sur les circonstances dans lesquelles les conditions énoncées dans la définition de certificat de production cinématographique ou magnétoscopique canadienne au paragraphe (1) sont remplies. Il est entendu que ces lignes directrices ne sont pas des textes réglementaires au sens de la *Loi sur les textes réglementaires*.

Income Tax Regulations, C.R.C., c. 945:

Interpretation

1106 (1) The following definitions apply in this Division and in paragraph (x) of Class 10 in Schedule II

[...]

excluded production means a film or video production, of a particular corporation that is

Définitions

1106 (1) Les définitions qui suivent s'appliquent à la présente section et à l'alinéa x) de la catégorie 10 de l'annexe II.

[...]

production exclue Production cinématographique ou magnétoscopique d'une société canadienne imposable visée (appelée « société donnée » à la

a prescribed taxable Canadian corporation,	présente définition), qui, selon le cas :
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[...]	[...]
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b) that is	b) est une production qui est, selon le cas :
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[...]	[...]
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ix. advertising,	ix. de la publicité
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[...]	[...]
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Canadian Film or Video Production

Production cinématographique ou magnétoscopique canadienne

(4) Subject to subsections (6) to (9), for the purposes of section 125.4 of the Act, this Part and Schedule II, Canadian film or video production means a film or video production, other than an excluded production, of a prescribed taxable Canadian corporation in respect of which the Minister of Canadian Heritage has issued a certificate (other than a certificate that has been revoked under subsection 125.4(6) of the Act) and that is

(4) Sous réserve des paragraphes (6) à (9), pour l'application de l'article 125.4 de la Loi, de la présente partie et de l'annexe II, production cinématographique ou magnétoscopique canadienne s'entend d'une production cinématographique ou magnétoscopique, à l'exception d'une production exclue, d'une société canadienne imposable visée, à l'égard de laquelle le ministre du Patrimoine canadien a délivré un certificat (sauf un certificat qui a été révoqué en vertu du paragraphe 125.4(6) de la Loi) et qui, selon le cas :

[...]	[...]
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CPTC Program Guidelines, published on April 2, 2012, by the Canadian Audio-Visual Certification Office:

Advertising: A production which includes:

Publicité : Une production qui comprend :

- | | |
|--|---|
| <p>(a) any commercial intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting these goods, services, natural resources or activities (also "commercial message");</p> | <p>(a) Les messages publicitaires visant la vente ou la promotion de biens, de services, de ressources naturelles ou d'activités, y compris tout message qui mentionne ou montre dans une liste de prix, le nom de la personne qui fait la vente ou la promotion de ces biens, services, ressources naturelles ou activités (aussi « message publicitaire »).</p> |
| <p>(b) any infomercial, promotional, or corporate video program exceeding 12 minutes, which combines information and/or entertainment with the sale or promotion of goods or services into a virtually indistinguishable whole. This includes videos and films of any length produced by individuals, groups and businesses for public relations, recruitment, etc. Advertising also means any commercial message and programming that promotes a station, network or program, but does not include:</p> | <p>(b) Les infopublicités, vidéos promotionnelles et d'entreprise dont la durée excède 12 minutes et qui offrent du divertissement ou de l'information combinés à la vente ou à la promotion de biens ou de services dans un ensemble presque indiscernable. Cela comprend les vidéos et les films, peu importe la durée, produits par des particuliers, des groupes et des entreprises aux fins de relations publiques, de recrutement, etc. La publicité désigne aussi les messages et les émissions publicitaires qui font la promotion d'une station, d'un réseau ou d'une émission, mais ne comprend pas :</p> |
| <p>(a) a station or network identification;</p> | <p>(a) l'identification d'une station ou d'un réseau;</p> |
| <p>(b) the announcement of an upcoming program that is voiced over credits;</p> | <p>(b) l'annonce d'une prochaine émission durant un générique;</p> |
| <p>(c) a program that consists exclusively of classified announcements, if the program is broadcast not more than once</p> | <p>(c) une émission composée exclusivement de petites annonces, si l'émission n'est diffusée qu'une fois pendant</p> |

during a broadcast day and lasts not more than one hour; or

(d) a promotion for a Canadian program or a Canadian feature film, notwithstanding that a sponsor is identified in the title of the program or the film or is identified as a sponsor of that program or that film, where the identification is limited to the name of the sponsor only and does not include a description, representation or attribute of the sponsor's products or services.

une journée de diffusion et si elle ne dure pas plus d'une heure;

(d) la promotion d'une émission canadienne ou d'un long métrage canadien, même si un commanditaire figure dans le titre de l'émission ou du film, ou figure à titre de commanditaire de l'émission ou du film, lorsque l'identification se limite au nom du commanditaire et qu'elle ne comprend aucune description, représentation ou caractéristique des produits ou des services du commanditaire.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1483-16

STYLE OF CAUSE: SERDY VIDEO II INC. v. MINISTER OF
CANADIAN HERITAGE

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: DECEMBER 19, 2017

**REASONS FOR JUDGMENT
AND JUDGMENT:** BELL J.

DATED: APRIL 18, 2018

APPEARANCES:

Alexandre Ajami FOR THE APPLICANT

Nadine Dupuis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Miller Thomson FOR THE APPLICANT
L.L.P.
Montreal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario