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ADJUDICATION NO: 03/A/2015

PROGRAMME NAME : CARTE BLANCHE PROMO
DATE OF BROADCAST : 8 JANUARY 2015 AT 18:00 TO 18:30
BROADCASTER : M-NET
COMPLAINANT : KOSTER

COMPLAINT

Disturbing promo showing graphic child abuse broadcast before the watershed, with no advisory to viewers.

APPLICABLE RULE

Watershed period

- 12 A television or composite subscription broadcasting service licensee, wherever practicable, must avoid broadcasting programming material, including promotional material, which is unsuitable for children and/or contains nudity, explicit sexual conduct, violence or offensive language before the watershed period.**
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ADJUDICATION

- [1] The Registrar of the Broadcasting Complaints Commission received a complaint regarding an allegedly inappropriate promo showing graphic violence, which was screened before the watershed, and without any warning as to its disturbing content.

[2] **The complaint reads as follows:**

"On 8 January 2015 between 18:00 and 18:30 during the airing of the comedy series Bad Teacher on Mnet, a Carte Blanche advertisement, graphically displaying the abuse of a Welkom nanny on a 7 month old baby was aired.

I would like to lodge a formal complaint for the following reasons;

1. The content of the advertisement was inappropriate for the family time viewing slot 2. No warning preceded the content making sensitive viewers aware of the disturbing nature thereof

I would appreciate my correspondence receiving the appropriate attention."

[3] **The Broadcaster responded as follows:**

"I refer to the complaint filed by Mr Koster in relation to the promotional material ("promo") for the Carte Blanche story titled "Baby beaters", which was broadcast on 8 January 2015.

I have been requested to respond to the complaint taking into account the provisions of the BCCSA Subscription Code dealing with the watershed period.

I note that there are no complaints about the insert itself, which was plainly a broadcast on a matter of significant public interest. The purpose of the insert was to raise awareness about the physical abuse of young children by babysitters (and as Professor Anne Skelton of the Centre for Child Law underscores in her interview during the insert, this kind of abuse is prevalent in South Africa). The insert calls on parents to be more vigilant in appointing babysitters by doing proper background checks and, if they can afford to do so, considering setting up cameras so that they can monitor the performance of the caregivers. This is particularly crucial in a country like South Africa where many parents are in a position where they must work during the day and, therefore, cannot be at home to care for their young children and must entrust this important function to other people.

Notwithstanding the above, Carte Blanche accepts that the promo went on before the watershed period on the particular occasion detailed by Mr Koster and should have carried a warning and that this was a violation of clause 12 of the BCCSA Code.

As regards an appropriate sanction, we submit that the following mitigating factors should be considered:

- * Carte Blanche has accepted that there was a violation of the Code and accepts responsibility for the violation. By doing so it has also saved the BCCSA the expense of holding a hearing in order to determine whether there was a violation of the Code.
- * When determining an appropriate sanction for the violation of the Code, regard must also be had to the broader context of the insert itself. That is, the insert was a serious piece aimed at achieving a serious purpose: the important public-interest purpose of making the public, and in particular parents, aware of the violence that has been committed against children (it was not, for example, a promo merely advertising a gratuitously violent fictional film).
- * In this regard I submit that the promo was analogous to the case of Dahms v e-tv (Case No: 37 of 2000) in which there was a complaint against an insert broadcast at 19h00 regarding child abuse, as part of the free-to-air news service on e-tv, and which "showed graphic footage of a child no older than 18 months being severely beaten across the head whilst sitting in a highchair." Significantly, in the Dahms case the BCCSA dismissed the complaint and held, I submit correctly, as follows:

"The rising statistics concerning child abuse in South Africa, is of grave concern to this Commission and broadcasters have a duty to contribute to the solving of this problem. News cannot and should not be limited to the usual scenes of political debate, speeches about community issues, international scenes of terrorism and hi-jacks with intermittent happier scenes to prevent viewers from becoming totally pessimistic. We simply cannot evade one of the most important social evils in our country: child abuse.

Although inserts of this nature should be treated with great sensitivity and should always be accompanied by warning to sensitive viewers, we believe that the community should, at times, be shocked into realizing how grave the problem of child abuse is. It was absolutely necessary to have shown these scenes and there was no evidence of sensationalism. We accordingly uphold the decision of the Commissioner and dismiss the complaint." (Emphasis added.)

- * After the promo was aired we had two complaints from viewers made directly to Carte Blanche and we immediately withdrew the promo from the air and replaced the shots with something less graphic.
- * At Carte Blanche, we take our constitutional responsibility towards protecting children very seriously. Indeed, that is precisely why the programme was compiled and broadcast in the first place. It is unfortunate that the promo advertising the insert did not carry a warning.
- * This is the first time that Carte Blanche has ever been found to be in breach of the BCCSA Code in relation to an inappropriate promo being broadcast before the watershed period.
- * Following the incident, we intend to run a training workshop to remind all of the relevant members of our staff who are involved in compiling our promos about the important watershed provisions in the Code. In this way we seek to ensure that a similar error does not occur again.

Accordingly, we take the view that a reprimand would be appropriate in the circumstances."

[4] The Complainant replied as follows:

"Thank you for your email and the opportunity to respond.

Firstly, I am not certain who the responsible broadcaster would be in this instance as the material in question was viewed on the M-Net channel as part of the DStv service we subscribe to.

Secondly, whilst your email suggests that my complaint was sent to M-Net for a response, upon reading the response I found that it was in fact a direct response from Carte Blanche?

Thirdly, in the 4th paragraph of the response, Carte Blanche acknowledges a contravention of clause 12 of the BCCSA Code whilst sighting 2 separate contraventions i.e. broadcasting the material before the watershed; and the material not carrying the appropriate warning. The distinction is clearly made in the second and third bullets towards the end of the response. This suggests that it is in fact both clauses 12 and 19(2) that were contravened.

Lastly, Carte Blanche goes to some length in dealing with the substance and merits of the subject matter that was broadcast. Whilst I have no objection to the subject matter and agree wholeheartedly that child abuse needs to be addressed, debated and exposed, my complaint is concerned with the principle of age appropriate programming and promotional material during family viewing time.

I have noted the remedial steps suggested to avoid a re-occurrence of this type of "error" but suggest that it should be the broadcaster in question that should commit to taking these steps and not Carte Blanche. I have no intention of taking this matter further but would appreciate

assurances from the responsible broadcaster that this matter is being addressed and remedial steps are being taken. A sincere apology would also have gone a long way in this instance.”

[5] **M-Net responded as follows:**

“From M-Net’s side we request all producers to deliver promo’s in time so that, as per standard operating procedure, the promo’s can be viewed by Programme Acceptance who will give scheduling advise (before/after watershed) to the M-Net marketing team, unfortunately the SOP was not followed in this specific instance and the producers delivered the promo straight to broadcast (on the Saturday for urgent scheduling before the Sunday broadcast) – which meant it was not seen by Programme Acceptance/marketing before it was scheduled. The Carte Blanche team have ensured us that they have put tighter measures in place to ensure that they at all times adhere to SOP of promo’s having to be approved by Programme Acceptance before it can be broadcast.”

EVALUATION

[6] The Complainant contends that the promo is harmful to children, and that no warning was provided regarding its disturbing content. In a reply to the Respondent, the Complainant goes on to point out that, while the Broadcaster conceded error, an apology would have been an appropriate response, though none was forthcoming.

[7] The Respondent concedes that an advisory should have been issued, though blame is laid at the feet of the programme presenters for failing to follow “standard operating procedures”. The Broadcaster is at pains to point out the importance of raising awareness of a matter of great public interest, i.e. child abuse in South Africa. However, this is not the issue, and that is the reason why there were “no complaints about the insert itself”. It goes without saying, of course, that the matter of child abuse needs to be raised, and raised urgently – as the Complainant also points out, reminding the Respondent that the complaint is about the failure to provide warnings when inappropriate material is broadcast before the watershed, during “family viewing time”.

[8] I watched the promo, which contains strong visual as well as auditory elements. Though brief, its impact is powerful, as, no doubt, it was intended to be. It immediately captures the viewer’s attention by means of loud, dramatic music with ominous undertones, punctuated by the piercing screams of a baby unable to protect itself from a blow delivered to the head, delivered by the looming figure of an adult carer who then yanks the baby up as if it is a doll, and shoves it against the sofa. The voice-over uses highly emotive language, including the words “nightmare” and “shocking”. The promo has all the elements of a horror movie, except that the scene

being witnessed is not fictional, but real. This adds to its shock value, resulting in a counter-productive effect, as the appalling images are imprinted on the mind of the viewer. It goes without saying that the shock value would be compounded in the case of viewers who are young, innocent and impressionable. Apart from the emotional and psychological damage of witnessing the scene, a further unfortunate effect might be in terms of race relations (an inescapable element in the visuals is the race of the nanny). It would not be too far-fetched, in the current overheated climate of racial disharmony in South Africa, to suggest that the scene might also have had the effect of sowing seeds of fear and hate, thereby causing further trauma in its campaign to raise awareness, if its audience was young and impressionable. Accordingly, long-term emotional harm to young viewers might therefore have been exacerbated rather than minimised, with negative social outcomes.

- [9] The Respondent concedes that a warning should have preceded the insert, and goes on to suggest that such an admission is a mitigating factor since it could obviate the need for – and therefore the expense of – calling a tribunal. This argument is specious, however, as financial considerations do not trump the well-being of children, which the BCCSA has pledged itself to protect in the light of the two Codes that it administers. Again, conceding that material such as that under discussion “should always be accompanied by warning to sensitive viewers”, it seems disingenuous to claim that “the community should, at times, be shocked into realizing how grave the problem of child abuse is. It was absolutely necessary to have shown these scenes and there was no evidence of sensationalism.” As argued above, the promo is grossly sensationalistic, and deliberately so, in order to gain the attention of the viewer. The public interest argument is not persuasive: it is, indeed, an aggravating factor that the footage was of an actual, not fictionalised, event. It is simply not good enough to describe the lack of an advisory as “unfortunate”, to pledge “staff training” – and then plead for a reprimand rather than a fine. The damage has been done. Moreover, Carte Blanche has been running for quite a number of years, with an experienced team of producers, so this argument lacks cogency. Furthermore, this case needs to be examined on its own merits, and so the reference to the fifteen-year-old *Dahms v e-tv* case (No: 37 of 2000) is not pertinent here.

[10] While admitting error, no apology is forthcoming from the Respondent, as the Complainant points out, and there is no attempt to redress this omission – an omission that is again evident in the Respondent’s second reply, though this time it is glaring.

[11] The Respondent need only consult the record to establish the seriousness of its error:¹ as previously pointed out, the BCCSA is under a Constitutional duty to “demonstrate its displeasure” at the programming errors, and appropriate action needs to be taken. The Respondent’s argument that “This is the first time that Carte Blanche has ever been found to be in breach of the BCCSA Code in relation to an inappropriate promo being broadcast before the watershed period” is a case of grasping at straws. Though in different circumstances, Carte Blanche has previously infringed the Code,² and this is not the first time that an M-Net promo has been in breach of the Code on the basis of graphic violence being screened before the watershed – a glance at the records clearly establishes these facts.³

[12] In the result I find that Clause 12 of the Code has been breached. Both the Respondent and the Complainant were required to provide me with argument as to sanction.

The Respondent filed the following submission:

“We refer to the draft adjudication in relation to the promotional material ("the promo") for the Carte Blanche story titled "Baby beaters" which was broadcast on 8 January 2015.

Before we commence with arguments on sanction, we would like to request that the Commission convey to the complainant that M-Net is the responsible broadcaster in this instance and that it is M-Net which will ensure that all the undertakings set out in this letter are implemented.

Furthermore, we are in agreement with the complainant and the Adjudicator that an apology is appropriate in this instance. We will broadcast an apology in the next episode of Carte Blanche (Sunday, 21 February 2015) which will be worded as follows:

¹ See, for example, Marcon vs M-Net, 53/2012; Also Eggers vs M-Net 54/2012, where I am quoted as follows: “I wish to draw the attention of M-Net to the issuing of several reprimands in recent years regarding the broadcast of unsuitable promos before the watershed: Adjudication No 04/A/2009 referred specifically to the broadcast of a series containing scenes of violence; Adjudication No 48/A/2009 issued a reprimand for a promo containing violent scenes; Adjudication No 68/A/2009 issued a reprimand that includes a reminder to the Broadcaster to heed its own counsel in being “more circumspect in future”; Adjudication No 17/A/2010 again issues a reprimand for unsuitable promo scheduling, and reminds the Broadcaster of its “undertaking to exercise caution in the scheduling of promos in future.”

² See CT International Finance Developments (Pty) Ltd & Sprigg Investments 117 CC vs M-Net, Case No: 42/2011.

³ See, for example, Stols & Others v M-Net 30/2010, where a fine was imposed “**in view of frequent reprimands previously issued**”.

"We wish to apologise on behalf of Carte Blanche and M-Net for broadcasting a promo for our Welkom-nanny story on 8 January 2015. The promo contained graphic images which were not suitable for children and should have been broadcast at a later time. This was an error on our part and, although it was immediately rectified, we sincerely regret any distress that the broadcast of the promo may have caused."

Our arguments on sanction are set out below:

This was not a deliberate or intentional violation of the Code by M-Net. The producers of Carte Blanche failed to follow the standard operating procedure implemented by M-Net and did not submit the promo to the Programme Acceptance Department for classification and scheduling. It appears that this happened because the promo was delivered late, meaning there was insufficient time for classification and scheduling.

We have not taken this transgression of our standard procedures lightly, both the producers of Carte Blanche and the scheduler responsible will receive a written warning. In addition, the producers of Carte Blanche have undertaken to conduct a training workshop with their staff to ensure that this incident is not repeated. We believe this will go some way to preventing similar incidents and we will ensure that this workshop takes place.

The promo was broadcast only once and it was withdrawn as soon as the error was discovered.

The complainant has indicated that he does not wish to pursue this matter and that he would be satisfied with assurances from M-Net that the matter is being addressed. We have provided such assurances and we believe that the apology, the disciplinary action taken and the training of Carte Blanche staff confirm our commitment, not only to addressing this matter, but to avoiding any recurrence.

With regard to the conclusion in the draft adjudication that previous reprimands have been "entirely ineffective", we submit that this conclusion is incorrect. Many of the previous findings by the Commission arose as a result of human error and we have done a great deal of work to reduce errors:

First, we undertook a review of the classification and scheduling workflows in every division; Second, when we discovered that processes had not been standardised, we implemented a standard operating procedure to be adhered to by all divisions - any content (including promos) which is intended for broadcast must be submitted to M-Net's Programme Acceptance Department for classification and scheduling⁴. This rule also applies to all local production companies which produce content for M-Net.

Third, in order to ensure compliance with these procedures, we required that disciplinary action must be taken against any staff member who deviates from the standard procedure without approval. Staff members receive an immediate written warning for deviating from the standard procedure without the approval of their line manager.

It is accordingly unfair and incorrect to suggest that M-Net has had no regard for the findings of the Commission. We take our responsibility to adhere to the Code very seriously and we will continue to work to eliminate violations which arise as the result of errors.

In light of all the factors raised above and the undertaking to provide an on-air apology, we submit that a reprimand would be the most appropriate and beneficial sanction in this matter."

The Complainant: "Thank you for your correspondence .I take note of the fact that this is not M-Net's first offence of this particular nature, but I leave it in the very capable hands of the BCCSA to suggest/apply an applicable sanction."

⁴ Some channels had previously relied on Commissioning Editors to fulfill this function

[13] I have noted the arguments of the Respondent, and the regret expressed seems genuine, as does the intention to issue written warnings and undertake training workshops to avoid a recurrence of the incident. The effectiveness of such action remains to be seen. The argument regarding the late delivery of the promo is a weak one, apparently shifting blame, since it is a primary duty of the broadcaster to ensure that correct classification and scheduling occur. Likewise the argument concerning “human error”: this is a clichéd and hollow defence since the broadcaster is obviously run by human beings (a species that is indeed fallible); it is the duty of any broadcaster to ensure that its employees are *responsible* professionals who are trained to make every effort to ensure public well-being, particularly that of children. Unfortunately, merely pledging to take action against staff members who deviate from procedures is not adequate, since by then the horse has bolted, and any harm may already have been done. Furthermore, a “written warning” seems a lame response once a child has been harmed – irreparably, perhaps. Despite all this, the offer to broadcast an apology is appropriate in the circumstances, and it is accepted. Because, in the present instance, the Code has yet again been breached, it seems obvious that a reprimand is entirely ineffective. I am therefore compelled to decide, as in a previous case, that “[s]ince little heed appears to have been paid to the frequent reprimands issued to the Broadcaster, and in view of continued transgressions of the Code, despite the Broadcaster’s assurances, there is little recourse other than the imposition of a fine.”⁵

Accordingly, in the light of the seriousness of the transgression, a fine of R10 000 is imposed. The amount is to be paid to the Registrar on or before 30 March 2015. A copy of the apology, which, appropriately, should be broadcast either in conjunction with or during a Carte Blanche programme before the end of March 2015, must also be sent to the Registrar, indicating the time and date of the broadcast of the apology.

⁵ Stols & Others v M-Net 30/2010.

**DR LYNDA GILFILLAN
BCCSA COMMISSIONER**