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CASE NUMBER: 24/2013

DATE OF HEARING: 02 JULY 2013
JUDGMENT RELEASE DATE: 31 JULY

O' BRIEN, GEARD AND ALLWOOD

COMPLAINANTS

vs

MULTICHOICE

RESPONDENT

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
 PROF VICTORIA BRONSTEIN
 MS GIUSEPPINA HARPER
 DR NANA MAKAULA

FOR THE COMPLAINANTS: The Complainants were invited to attend but could not attend.

RESPONDENT: Mr Bruce Mkhize, Regulatory Compliance Manager, Regulatory Affairs, DSTV.

Promotional material harmful to children – O'Brien & Others vs Multichoice, Case: 24/2013(BCCSA)

SUMMARY

Complaints about promotional material during a programme with popular appeal between 18:00 and 19:00 were received. That the material complained about amounted to a contravention of the Subscription Code was conceded by the Respondent. A

managerial oversight was to blame for the error and immediate steps were taken to rectify it.

The Tribunal agreed with the Complainants that the material was indeed shocking.

Held that the protection of children is fundamental to the Constitution of the Republic of South Africa (1996). Both the Broadcasting Code for Free-to-air Broadcasters and the Broadcasting Code for Subscription Broadcasters accentuate the protection of children in so far as harmful or distressing material is concerned.

Held, accordingly, that despite extenuating circumstances and immediate rectification, it would be appropriate to demonstrate the importance of the protection of children by imposing a fine of R10 000.

JUDGMENT

JCW VAN ROOYEN SC

[1] Complaints about promotional material during a programme with popular appeal between 18:00 and 19:00 were received.

[2] **The complaints read as follows:**

O'Brien: "I would like to lodge a complaint regarding an inappropriate advert that was aired during Masterchef Australia on MNET on Wednesday evening (24/4/2013). It was an advert for a movie called "Hanibal" and showed very violent and grotesque images that is certainly NOT for children and should not be aired during family viewing time. I have 2 little children whom I am trying to protect from such evil things and such adverts during clean programs that we as a family enjoy is unacceptable. Unfortunately this is not the first time and I fear that it may be becoming a trend."

Geard: "I would like to complain about DSTV Channel 101 Time 6pm-7pm on Wednesday 24 April during the Programme Master Chef. I was watching Master Chef on Wednesday 24th with my children who are 7 and 9. I was shocked and appalled to be confronted with a advert for Hannibal, a series about a serial killer. The visuals included violence, blood a mutilated naked body, dripping blood - it was absolutely disgusting for an adult - but totally inappropriate for family viewing. I am very shocked by this experience, and feel that it was totally not acceptable. For this reason I am bringing it to your attention as it goes against the code of conduct of subscription viewing and what is and is not appropriate during watershed time."

Allwood: "I wish to voice my outrage at the broadcast of an advertisement while watching "Masterchef" on channel 101 on the 24th April between 6 and 7pm.

The advert was for a television series "Hannibal" and occurred during one of the ad breaks.

Although Masterchef is not per se a children's programme, it is aired at prime time on channel 101 at a time in the evening when children may be watching TV with their parents.

So it is with disgust that I watched the extremely graphic, violent, dark and disturbing advert for Hannibal - A Series about a serial killer - being broadcast without any warning in the middle of a family hour show. The images flashed on the screen would imprint on anyone's mind instantly, and are the stuff of nightmares. I shudder to think of the impact it would have on a child innocently watching a family oriented show.

If DSTV insists on broadcasting gratuitous, sick, violent shows with adult content, then these naturally should occur outside of prime time, when all sensible families are asleep.

As a parent there exists the ability to block and censor this inappropriate content, as we do; but common sense would suggest that the content of the advert breaks would mirror the content and theme of the show, viewership, and time of broadcast.

It is therefore astonishing, outrageous and deeply unacceptable that such graphic, strictly adult content could be advertised during family viewing.

I can only assume that the person responsible for this error is new at their job, and doesn't have children.

It would be interesting to receive a formal explanation and perhaps an apology from DSTV, as well as the assurance that next time I watch a family show I am not going to be unexpectedly forced to change channels to avoid my children having nightmares for weeks.

I feel very strongly about the broadcast of ubiquitous violent content across many channels on DSTV. The effect of the systematic desensitization of viewers to graphic and gratuitous violence is all too plain to observe around the world with increasingly bizarre, violent, aggressive behaviour as a result of movies, television and video games. This has been repeatedly documented in many countries of the world including SA. I would prefer my family to remain protected from such unnecessarily disturbing content."

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

"RE: COMPLAINT FROM MERGAN O' BRIEN REGARDING HANIBAL PROMO

1. Introduction
 - 1.1 We refer to the complaint by Megan O' Brien regarding a promo broadcast on channel 101, (M-Net channel) on 24 April 2013 at 18h00.
 - 1.2 The complainant objects to the broadcast of the promo on the basis that it was not suitable to be broadcast before watershed period and was also not suitable to be broadcast during a programme classified as suitable for family viewing.
 - 1.3 We have been requested to respond to the complaint taking into account clause 12 of the Code which deals with the watershed period.
2. **The Promo**
 - 2.1 The promo was broadcast on the M-Net channel (Channel 101) at 18h00 during the show Masterchef Australia.

2.2 The promo concerns a TV series, *Hannibal*, which is loosely based on the book by Thomas Harris titled *Red Dragon* and tells the story of the early relationship between psychiatrist Dr Lecter and his patient Will Graham, an FBI criminal profiler, who has the uncanny ability to empathise with the deadliest serial killers that are stalking the city.

3. **Our response.**

3.1 We do agree with the complainant that the promo in question was not suitable for younger viewers and to be broadcast during family viewing programme.

3.2 Ordinarily such promo would not have been approved by the channel for broadcast during family viewing time. The channel provider, M-Net, has comprehensive approval processes which are applicable before any promotional material is allowed to be broadcast on its channels.

3.3 The approval processes take into account provisions of the Code and suitability of the promo for the programme on which it is broadcast.

3.4 However in this particular case, the promo was actually a commercial advertisement and had been paid for by a foreign channel purchasing airtime on a local channel.

3.5 The channel advertising the promo therefore was not required to send the promo to M-Net for screening and pre-approval. Prior to this complaint, commercial advertisements such as this one, did not have to follow a pre-approval process.

3.6 We have now learnt from this complaint and have identified a weakness in the pre-approval and screening process.

3.7 The pre-approval process will now also apply to all commercial advertisements promoting programming material.

4 **Conclusion**

4.1 In conclusion we are grateful to the complainant for bringing this matter to our attention. The channel ceased broadcasting the promo before watershed period immediately after receiving this complaint.

4.2 In addition we have implemented measures to ensure that our screening and pre-approval processes are strengthened to avoid a repeat of similar incident.”

EVALUATION

[4] The Subscription Code provides as follows in clause 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.

[5] That the material complained about amounted to a contravention of the Subscription Code was conceded by the Respondent. We agree with the Complainants that the

promotional material was indeed shocking. The fact that it was paid for by the relevant company, is irrelevant. It amounted to promotional material and the said material was conceded to be in contravention of the Code. It is true that an oversight was to blame for the error, and that immediate steps were taken to rectify it.

- [6] The protection of children is fundamental to the Constitution of the Republic of South Africa 1996. Both the Broadcasting Code for Free-to-air broadcasters and the Broadcasting Code for Subscription Broadcasters concentrate on the protection of children in so far as harmful or distressing material is concerned. We are, accordingly, of the view that, despite extenuating circumstances and immediate rectification, it would be appropriate to demonstrate the importance of the said protection by imposing a fine. The maximum fine is R60 000. We believe that a fine of R10 000 would be appropriate in the present instance.

The complaints are, accordingly, upheld and a fine of R10 000 is imposed.



**JCW VAN ROOYEN SC
CHAIRPERSON**

Commissioners Bronstein, Harper and Makaula concurred with the judgment of the Chairperson.