BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

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CASE NUMBER: 32/2006

DATE OF HEARING: 27 JULY 2006

C HÖRTER **COMPLAINANT**

vs

5FM **RESPONDENT**

TRIBUNAL: **Prof Kobus van Rooyen SC (Chairperson)**
Dr Linda Venter
Ms Refiloe Mokoena-Msiza

Complainant: **The Complainants did not attend.**

Respondent: Mr Fakir Hassen, Manager: Broadcast and Compliance, accompanied by Ms Veronica Barnard and Mr Nick Grubb, Programme Manager, 5fm

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Religion – profane word in song – not hate speech or unsuitable for children. Crude language – use of "whore" in song not a contravention in the context of the song. . C Hörter vs 5fm, Case No: 32 /2006.

SUMMARY

The Registrar received a complainant from a listener in regard to the broadcast of a song which, according to the listener, is religiously offensive. I referred the matter to a Tribunal as part of several other complaints. Complaints on race, religion, gender, sexual orientation, sexuality, news and children often call for a decision by a wider group than an adjudicator. There are different forms of taking the Lord's name in

vain. Although, from a principled view, each version is as offensive as the other, it is also true that usage of certain forms have become more common than others and even more acceptable or tolerable. "Goddamn", in spite of its damning nature has, somehow or other, become one of the softer forms of the taking in vain of the Lord's Name. In fact it has lost its original meaning in common parlance. However, there would be many religious people who would think differently. Of course, frequency within a certain context could be aggravating. The Tribunal is of the view that the word as used in the song would at least lead to a sense of unease and at the most to offense. A balance must be struck between these two views. The Tribunal believes that the use, in this particular song, does not amount to a contravention in the sense of hate speech. The word is also not used in such a manner that it could be regarded as unsuitable for young people to hear. Of course, one would rather not have them hear words such as this word. But the practical reality is that the word is used and that parents and other custodians and teachers should constantly counter this kind of language and impress it on the minds of children that it is simply not proper to use this kind of language. But that is not a matter for legal interference. The same reasoning, in essence, applies to the use of the word "whore" in the song. The complaint is not upheld.

JUDGMENT

Prof JCW van Rooyen

[1] The Registrar received a complainant from a listener in regard to the broadcast of a song which, according to the listener, is religiously offensive. The word "whore" is also included in the song. I referred the matter to a Tribunal as part of several other complaints. Complaints on race, religion, gender, sexual orientation, sexuality, news and children often call for a decision by a wider group than an adjudicator.

[2] **The Complaint reads as follows:**
"There is a song on 5fm "I write sins not Tragedy – Panic! At the Disco" that is played at least 3 times a day on 5FM that is extremely offensive. They swear in it and it is blasphemous and I cannot stand it anymore. I don't know the song's name as I put the radio off or to East Coast Radio when it comes up. I've enquired from 5FM what the song is called, but haven't had a reply. The lyrics goes something like this: "the bridegroom is a whore. Havent' you ever heard of close the G** damn door…"

[3] The **SABC responded as follows**:
"The song in question does indeed use the lyrics as specified in the complaint. However, we believe that the word "whore", used once, is not gratuitously vulgar, and is a word in

common usage. The term "God-damn" is not in our opinion anti-religious or blasphemous, as alleged by the complainant. It is an expression that has lost its original meaning and does not amount to hate speech or any intention on the part of the user to demean followers of any religion."

[4] Clause 18.1 of the Broadcasting Code prohibits broadcasters from broadcasting material that is unsuitable for children where a large number of children is likely to be in the audience. Clause 16.3 prohibits the broadcasting of material that advocates hatred based on religion and which incites to harm.

[5] This Tribunal has often held that the mere taking in vain of the Lord's name does not, in law, amount to blasphemy. The material must scandalize God before it falls within this class of unacceptable language. A very large number of listeners would be surprised to hear this and argue that for them the mere taking in vain of the Lord's Name amounts to blasphemy. But the path of the Law often differs from religious convictions and feelings. On the one hand the Constitution of the Republic guarantees the right to freedom of expression which includes the right to artistic freedom. On the other hand it also guarantees freedom of religion. It is obviously necessary to maintain a balance between these two fundamental rights. Not one of them is more important than the other. Nevertheless, the facts of each matter should be weighed to come to a conclusion.

[6] There are different forms of taking the Lord's name in vain. Although, from a principled view, each version is as offensive as the other, it is also true that usage of certain forms have become more common than others and even more acceptable or tolerable. "Goddamn", in spite of its damning nature has, somehow or other, become one of the softer forms of the taking in vain of the Lord's Name. In fact it has lost its original meaning in common parlance. However, there would be many religious people who would think differently. Of course, frequency within a certain context could be aggravating. The Tribunal is of the view that the word as used in the song would at least lead to a sense of unease and at the most to offense. A balance must be struck between these two views. The Tribunal believes that the use, in this particular song, does not amount to a contravention in the sense of hate speech. The word is also not used in such a manner that it could

be regarded as unsuitable for young people to hear. Of course, one would rather not have them hear words such as this word. But the practical reality is that the word is used and that parents and other custodians and teachers should constantly counter this kind of language and impress it on the minds of children that it is simply not proper to use this kind of language. But that is not a matter for legal interference. The same reasoning, in essence, applies to the use of the word "whore". In the context of the song it is tolerable and its presence is not likely to promote the use of the word by children. Although "whore" is, of course, a derogatory word, it is essential and functional in this song.

The complaint is not upheld.

PROF KOBUS VAN ROOYEN SC
CHAIRPERSON

Ad Hoc members Venter and Mokoena-Msiza concurred with the judgment