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Case Number: 36/2005

Date of Hearing: 11 May 2005

HG VAN DER LINDE **COMPLAINANT**

vs

ELECTRONIC MEDIA NETWORK **RESPONDENT**

TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Prof Ravi Nayagar
Mr Ed Linington (Co-Opted)

For the Complainant: The Complainant in person

For the Respondent: Mr Glenn Penfold from Webber Wentzel Bowens, accompanied by Mr George Mazarakis, Executive Producer, Carte Blanche.

SUMMARY

The registrar received a complaint against M-Net, the subscription broadcaster, concerning its regular programme, *Carte Blanche.* The complainant argued that he had been prejudiced in a programme concerning so called "bad oil" at a fish outlet. He had, incorrectly, been referred to as the owner of the outlet concerned while he was acting on behalf of his wife who was the owner. He said that he stated that he was not the owner. M-Net argued that the impression had been created that the complainant was indeed the owner of the Something Fishy outlet complained of. He did not state to them that he was not the owner.

We have no doubt the complaint is not the owner of the shop of which he was referred to as being the owner. We also agree that he must have been hurt substantially by the programme. On the other hand it is also true that his mere presence created the impression that he was the owner. The question, accordingly, is

whether the broadcaster should have taken more steps than it did. The test would be whether the reasonable broadcaster in the same position as M-Net would have made further inquiries before it broadcast the insert on Bad Oil? Of course this is not always an easy question to answer. News commentary programmes need to reach the public with the latest news and should not be hampered unreasonably in this regard. Although it is not the task of this Commission to judge reporters, it is also true that conduct of a reporter could lead to a finding against a broadcaster, which is subject to the Code to which they have agreed. Given the extreme relevance of the ownership of the outlet involved and the enormous influence that an error in this regard could have on the standing of a person who is also in the business but not the owner of that particular outlet, the Tribunal is of the view that the reporter should have undertaken a more careful inquiry. The reference to the complainant as the owner was, accordingly, "not made on facts truly stated" as required by clause 35 of the Code.

The complaint was upheld.

JUDGMENT

JCW van Rooyen (Chairperson)

Background

[1] The registrar received a complaint against M-Net, the subscription broadcaster, concerning its regular programme, *Carte Blanche*.

[2] The complaint reads as follows:

> "I herewith wish to tell of the defamatory, insult to my dignity, integrity and privacy of my basic Constitutional rights, by the Multichoice program, called Carte Blanche, on the M-Net channel. This programme is broadcast over Africa and beyond, according to my knowledge, every Sunday between 19:00 and 20:00. I am not assisted in the drafting of this statement but state under oath in English the truth.
>
> In July 2004 the programme presenter for Carte Blanche, Devi Sankaree and her Television crew, arrived at Something Fishy, Pinetown, Old Main Road., telling the Manager, Allison, that they wish to do an interview with the Franchisee of the outlet.
>
> My wife Elize Van der Linde, her parents, Paul and Elsa Theunissen, are the Franchisees, on record at Something Fishy Head Office, on the Lease of the Property, and all legal documentations regarding the outlet. Elize is the Manager

Member. I am not in the outlet's employ, in any way. I however am asked at times to keep a eye on the outlet when neither of the owners is in Durban. The outlet has a full time Manageress and relief Manageress.

We received SMS's on 23 July 2004 from our Head Office Business Development Manager, Johan Pieterse, stating that certain stores allegedly had bad oil. During the same period Father–in-Law, Paul, had serious heart problems and in need for by-pass Operations in Polekwane. The whole family, which is a close knit family, was already totally stressed out. Once the TV crew arrived at the outlet in Pinetown, my wife cried and was in no state to do anything. I agreed to go to the outlet and told my wife that somebody has to respond and suggested the attorney Mr Robert Sinclair, of Pinetown.

On arrival at the store there was no representation from Something Fishy, Head office, or the attorney. I approached the lady called Devi, and identified myself, clearly in English, also stating that "..I am not the owner of the outlet." I am a private person and do not wish to be recorded or taped in any way. There is a right of admission reserved on the door. "I stated that they should wait for Mr Sinclair who would be able to assist them." They agreed. Devi then asked me (whether) I was the owner of Ashley outlet, in Pinetown. I responded that I used to be the owner but have sold the outlet some time ago, and that the owner should be at the outlet as he has no Manager. I stated that I have an outlet in Queensburgh. I believe that we were off camera during this time as the cameraman indicated that the camera is off. Mr Sinclair then arrived and attended to the visitors.

According to my knowledge they did not inquire if I was the owner from anybody in my presence.

The programme was then aired on the Sunday night. During this period my wife was in Westville Hospital for stress related matters. I was with her. I could not believe that they suggested that I was the owner of the Pinetown outlet. They further suggested a link between myself and the outlet, Ashley, which does not belong to me either. They rectified their statement on air and then again made some sort of connection between myself and the Ashley outlet. It was clear that their intention was to create sensation, for their audience.

I recorded the programme and have an unedited tape. I visited the attorney, Mr Sinclair, shortly thereafter. We then both visited the advocate Mr E Lingenfelder, in Durban. In his written opinion he states that a case for defamation does exist. Nothing has since occurred as I need to pay very high payments to sue the station. It was made clear that M-Net has one of the biggest law firms in Johannesburg.

I approached another firm but the attorneys want me to pay my way.

My dignity was so much affected that I am ashamed to say my name where people can recognize me. I belong to the Lions Club in Queensburgh and have a certificate from them that used to hang in front of my shop. It has my name on it. I removed it out of shame, for I would be recognized, as the store is my bread and butter.

I have however lost trade in Queensburgh, and also had to field lots of embarrassing questions. Everybody that knew me at one stage or another contacted me and my children as well as my ex wife. They are young children and are shameful for what they perceived I have done. I myself was very young when my father died. Everything I have done and have achieved in life, I have accomplished myself. All that now has a question mark attached.

I am now suffering financially due to low trade and low self esteem. I do not wish to visit places where I have to identify myself as from Something Fishy. My constitutional rights have been infringed and I wish to apply for rectifying of a grave injustice and some sort of compensation. They had no right to cause this. They should have made sure that they do not harm innocent people. They should be held accountable and be more careful in future.

It is my sincere wish to apply to the Commission for a hearing and or any other avenues available to the Commission to see that Justice and the damage caused is somehow rectified."

[4] M-Net argued that the impression had been created that the complainant was indeed the owner of the Something Fishy outlet complained of. He did not state to them that he was not the owner.

[5] **Clause 35 of the Broadcasting Code provides as follows:**

> 35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.
>
> 35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

[6] We have no doubt the complainant is not the owner of the shop of which he was referred to as being the owner. We also agree that he must have been hurt substantially by the programme. On the other hand it is also true that his mere

presence created the impression that he was the owner. The question, accordingly, is whether the broadcaster should have taken more steps than it did. The test would be whether the reasonable broadcaster in the same position as M-Net would have made further inquiries before it broadcast the insert on Bad Oil? Of course this is not always an easy question to answer. News commentary programmes need to reach the public with the latest news and should not be hampered unreasonably in this regard. Although it is not the task of this Commission to judge reporters, it is also true that conduct of a reporter could lead to a finding against a broadcaster, which is subject to the Code to which they have agreed. Given the extreme relevance of the ownership of the outlet involved and the enormous influence that an error in this regard could have on the standing of a person who is also in the business but not the owner of that particular outlet, the Tribunal is of the view that the reporter should have undertaken a more careful inquiry. The reference to the complainant as the owner was, accordingly, "not made on facts truly stated" as required by clause 35 of the Code.

[6] As to sanction we have decided that it would not be necessary to direct that M-Net broadcast the outcome of this judgment. The complainant can use this judgment to inform his business connections that we found in his favour. The Broadcaster is reprimanded for this error.

The Complaint is upheld

JCW VAN ROOYEN SC
CHAIRPERSON

Co-Opted member Linington concurred.

Commissioner Nayagar held that the owner created the impression that he was the owner and that the complainant had himself to blame. He would have dismissed the complaint.