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**CASE NUMBER: 37/2003**

**DATE OF HEARING: 22 AUGUST 2003**

**SOUTH AFRICAN DENTAL ASSOCIATION** **COMPLAINANT**

**VS**

**M-NET (CARTE BLANCHE)** **RESPONDENT**

**TRIBUNAL:** **MR RATHA MOKGOATLHENG(CHAIRPERSON)**
**PROF HENNING VILJOEN**
**MS REFILOE MOKOENA-MSIZA (CO-OPTED MEMBER)**

**FOR THE COMPLAINANT: DR NEIL CAMPBELL, CEO OF SA DENTAL ASSOCIATION ASSISTED BY P GOVAN.**

**RESPONDENT: MR GEORGE MAZARAKIS, EXECUTIVE PRODUCER OF CARTE BLANCHE MR CARL FISCHER, DIRECTOR OF LOCAL PRODUCTIONS AND MR SEYMOUR HOLMAN, PROGRAMMING MANAGER OF M-NET**

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*Broadcast of controversial issues of public importance – whether broadcast essentially and substantially conforming to and inclusive of the views of both parties – whether within context broadcast was fair and balanced – Code not contravened. Broadcaster within context made reasonable efforts to fairly present opposing points of view – Commission in its assessment of what constitutes sufficient opportunity to express an opposite viewpoint is guided by whether the opportunity to respond was proffered, not by the cogency and length of the response – Broadcaster has editorial freedom to decide on content, and contextualisation,, this prerogative is only circumscribed by the dictates of*

*fairness and balance - complaint dismissed – SA Dental Association vs M-Net, case 37/2003.*

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**SUMMARY**

**Complaint that broadcaster accorded parties unequal time in the presentation of opposing views and unfairly edited the programme, thus rendering the broadcast unbalanced, distorted and biased.**

**Held, that the Broadcaster enjoys editorial freedom to decide on content and context of broadcast - broadcaster is enjoined to make reasonable efforts to fairly present opposing viewpoints, subject only to the dictates of fairness and balance - no obligation on Broadcaster to accord contending viewpoints equal time in the broadcast - complaint dismissed.**

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**JUDGMENT**

**Ratha Mokgoatlheng**

[1] The Complaint relates to the insert *"Slow poison Amalgam filling"* on Carte Blanche flighted on the 25th May 2003 by the Respondent. The disgruntlement concerns the assertion by the presenter that, "all amalgam fillings were considered unsafe and posed a serious and immediate danger to the health and well being of any person who had amalgam fillings in their teeth. The only way to improve one's health was by the removal of these toxic amalgam fillings", the presenter asserted.

[2] The Complainant asserts that the programme was unbalanced, unfair and propagated one view. Further that the programme distorted and exaggerated the danger of amalgam fillings.

[3] The presenter allocated more time to views coinciding with the presenter's opinion, asserts the Complainant. The programme misled uninformed viewers into believing that amalgam fillings posed an immediate and serious threat to their health. This amounted to an inaccurate and distorted conclusion regarding the presence of amalgam fillings in teeth.

[4] The programme edited vital information proffered by the Complainant by intentionally omitting relevant factors, which omission introduced a different perspective to the actual programme broadcast.

[5] The producer excluded significant points of views made by the Complainant which views were representative of the dental profession in South Africa, regarding this controversial issue of major public importance.

[6] The Respondent, by selective editing, excluded specific answers of the Complainant's response to statements made by the panel interviewed by the presenter. This editing was intended to depict the dental profession in an unflattering light and as being totally irresponsible to the dangers posed to patients and had no concern at all about the patient's best interest.

[7] The argument advanced is that the Respondent, by not allowing the Complainant equal broadcasting time to convey an alternative viewpoint and elaborating in the absence of conclusive scientific evidence, seemed to align itself with the views of the panelists.The programme was tendentious and only propagated the anti-amalgam view.

[8] The Respondent denies contravening the Code and states that the broadcast was fair and balanced and included all viewpoints and did not misrepresent the interest of the Complainant.

[9] The Complainant contended that the Respondent misrepresented its stance on the alleged toxicity of amalgam fillings by broadcasting a distorted, unbalanced, unfair and biased view. This view seemingly lent credence to the protagonists of the school of thought that amalgam fillings are toxic and are a threat to the health of patients with such fillings in their teeth.

[10] The Complainant states that the programme caused its members great embarrassment. The programme was likely by its sensationalism to lead to widespread panic, and that this programme was based on unfounded speculation.

[11] The Respondent failed to interview a world famous dental scientist like Dr Clayton and Dr Strydom who would have provided an erudite scientific rebuttal of the views propounded by Dr P Clock, Dr C Malmstroem and Dr A Affiting.

[12] The failure by the Respondent to canvass the views of the scientist it was referred to by the Complainant, renders the broadcast unbalanced, unfair, distorted and biased in favour of one viewpoint argues the Complainant.

[13] The Complainant furnished the Commission with a lengthy dental discourse regarding toxicity in amalgam fillings and in dental restorative component materials, the advisability of using amalgam and ancillary scientific findings.

[14] The Commission is not sitting as a dental scientific tribunal, and cannot make a finding of either hypothesis propounded by the two schools of thought regarding the toxicity or not of amalgam fillings in patients' teeth.

[15] The CEO of the Complainant, Dr Neil Campbell was approached by the Respondent who presented to him what it termed the latest scientific research relating to the toxicity of amalgam fillings. Apparently this debate is perennial and surfaces periodically in dental circles.

[16] Dr Campbell, on behalf of the Complainant, was interviewed for one and a half-hours; he states that he directed the Respondent to interview Dr Clayton for a scientific viewpoint. The Complainant contends that failure by the Respondent to interview Dr Clayton rendered the broadcast partial, unbalanced and unfair and distorted the Complainant's viewpoint.

[17] The Respondent states that in approaching the Complainant for comments, it was in effect canvassing the most representative and credible body representing the dental profession in the country. The Respondent asserts that it was furnished with the Complainant's viewpoint. The programme was fair and balanced as it contained all significant viewpoints, contends the Respondent.

[18] The applicable rules are:

**"35. Comment**

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.

**36. Controversial issues of public importance**

(1) In presenting a programme in which controversial issues of public importance are discussed, a licensee shall make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time."

[19] One of the objectives of the Code is to ensure fair and balanced comment on matters of public importance. This objective, however, must be reconciled amongst others with the Respondent's right to freedom of speech, and its editorial prerogative to determine what in its view should form the content of the programme it broadcasts. The Respondent's editorial freedom is not absolute. The

Respondent in the exercise of its editorial freedom in broadcasting controversial issues of public importance is enjoined to make reasonable efforts to fairly present opposing points of views regarding the content thereof.

[20] Before clause 35.1 of the Code can be invoked, the Tribunal must be convinced that the programme dealt with was a matter of public importance. The parties agree that the question regarding the toxicity of amalgam fillings in teeth is a perennial matter of public importance; contending that "issues are complex and attract widely divergent and strongly held views"

[21] "The Commission will only venture into the realm of bias in a programme that deals with a matter on of public importance where bias is clear and unequivocal, because bias by its nature is at times largely a creature of perception and emphasis. We are of the view that the programme itself, would not be perceived by the likely viewer as being unequivocally biased."- *J Shoot, EMETSA & Others 08/2003* The topicality of the programme concentrates on the latest research findings regarding amalgam fillings. The presenter is entitled to make an honest expression of opinion regarding the content of the research findings. The presenter is however enjoined in the interest of fairness and balance to grant sufficient opportunity to the Complainant to present its views, which in our view he did competently.

[22] The Commission in its assessment of what constitutes a sufficient opportunity to express an opposite viewpoint is guided more by whether the opportunity to respond was granted rather than the cogency and length of the response. The fact that the Complainant was granted an interview of over one and a half hours by the Respondent and that only about four minutes of such footage was utilised in countering the views espoused by the panelist, is not decisive as the Respondent retains editorial control and freedom in the presentation of the content, subject only to the dictates of balance and fairness.

[23] Carte Blanche is a programme renowned for broadcasting controversial issues of public interest. The broadcast complained of apparently elicited widespread public interest as it concerns a subject affecting many persons. Further to compound the matter it appears there is no scientific unanimity concerning the issue. It is thus to be expected that the protagonists will feel aggrieved by perceptions that the Respondent is favourably disposed to the views propagated to the exclusion of their own views. Such perceptions may in fact be rightly held, but these perceptions do no necessarily amount to unequivocal bias.

[24] The Constitution recognises the special importance of the rule of the media in nurturing and strengthening our nascent democracy. This recognition is expressed in Section 16 of the Constitution which determines that "freedom of speech and expression shall include freedom of the press and other media" and the freedom to receive or impart information or ideas Cameron J (as he then was) in *Holomisa v Argus Newspapers Ltd 1996 (2) SA 588 (W) at 608* made the following apt observations:

> "In a system of democracy dedicated to openness and accountability, as ours is, the especially important role of the media, both publicly and privately owned, must in my view be recognized. The success of our constitutional venture depends upon robust criticism of the exercise of power. This requires alert and critical citizens. But strong and independent newspapers, journals and broadcast media are needed also, if those criticisms are to be effectively voiced, and if they are to be informed with the factual content and critical perspectives that investigative journalism may provide**."**

[25] Within context the Commission finds that the programme was fair and balanced, that the Respondent made reasonable efforts to fairly present opposing points of view in the same programme.

[26] The Tribunal endorses the Respondent's editorial prerogative in deciding the contextualisation of the programme, and finds that it accords with the principles of fairness and balance.

**The complaint is dismissed.**

**MR RATHA MOKGOATLHENG**
**BCCSA DEPUTY CHAIRPERSON**

29 September 2003

***Prof Viljoen and co-opted member Ms R Mokoena-Msiza concurred with the judgment.***