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CASE NO: 42/2003

Date of Hearing: 6 October 2003

MRS B HILL
MS F COHEN **Complainants**

V

SABC **Respondent**

Commission: **Prof Kobus van Rooyen SC (Chairperson)**
Mr Ratha Mokgoatlheng
Dr Lynda Gilfillan (Co-opted Commissioner)

For the Respondent: Ms Dorothy van Tonder, Consultant, Broadcast Compliance, Regulatory Affairs, SABC

Jurisdiction of BCCSA – self- promotional material not amounting to advertisement - even in cases where another channel under the same company is promoted.

Racism -No evidence of hate speech based on race –TV station broadcast new image promo – depicting race role reversal – devoid of "anti-apartheid" propaganda – employs humour in depicting racial stereotypes – not counter-productive – content aims to depict cultural activities and modes of behaviour of respective racial groups – intention to achieve understanding of other groups and to promote self-examination by putting oneself in the shoes of the other. Hill & Cohen vs SABC: Case No: 42/2003.

SUMMARY

Promotional advert to launch new image of SABC1. Its intention was to promote mutual understanding of culture and way of life among young black and white South Africans. The method included the use of humour with a slightly satirical edge. The Complaints of racism were dismissed

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JUDGMENT

JCW van Rooyen

[1] *In limine* I must rule whether the BCCSA has jurisdiction as to a promotion for a channel which forms part of the same group. In this case SABC1 (TV) was promoted on the other two TV channels. If the promotion amounts to an "advertisement" in terms of the Independent Communications Authority Regulations in connection with advertisements as published in the *Gazette* of 1 April 1999, then the BCCSA does not have jurisdiction.

[2] The relevant definition in the Regulations of ICASA reads as follows:
"self promotion promo " means a promotional announcement transmitted by a broadcaster and which focuses on a forthcoming programme to be transmitted by that broadcaster, or on the broadcaster or one of its channels"

[3] Regulation 1.2 provides as follows:
"Advertisement" means any material broadcast, in visual and/or audio form, for which the broadcaster receives a consideration, in cash or otherwise, and which promotes the interests of any person, product or service, *provided that:*

1.2.1 spot commercials…(etc)…. shall be regarded as being advertisements*;* ***but public service announcements…..and self-promotion promos shall not be regarded as being advertisements."***

[4] The SABC, as the relevant broadcaster (with different licences for particular services) is one company. Accordingly, when SABC 1 promotes SABC 2 or 3, it is in effect SABC(Pty) Ltd which is promoting on one of its channels. I am informed that the word "channel" applies to both radio and television. This brings the promotion within the definition of a self-promotion promo, which is not regarded as an advertisement. In deciding this point, it should be noted that the promotional announcement transmitted focused on "…the broadcaster or *one of its channels*." That SABC1 is one of SABC (Pty) Ltd's "channels" is beyond doubt. The promotional announcement accordingly amounts to a self-

promotional announcement and falls under the jurisdiction of the BCCSA, which deals with material, that does not amount to advertisements**.** The same principle will apply where, for example, SABC1 promotes one of the SABC's radio stations**.**

[5] Although the above mentioned Regulations pertain to the relationship of the Broadcasting Monitoring and Complaints Committee ("BMCC") with the Advertising Standards Authority of South Africa ("ASA"), what applies for the BMCC will also apply to the BCCSA.

My colleague, Dr Gilfillan, will now deal with the merits of the matter before us.

L Gilfillan

(1) The SABC broadcast a short promotional advertisement to launch the new image of SABC1. Its intention was to promote mutual understanding among young black and white South Africans. It set out to achieve this by means of humour in a promo which has a slightly satirical edge to it. The satirical aspects of the video rely for their impact on black/white role reversal. Mrs B Hill and Ms F Cohen each lodged a complaint. The former complained that the promo worked against nation-building, thus failing to comply with the Broadcasting Code.

(2) Ms Cohen argued similarly that the promo was offensive. She maintained that it was antagonistic to the aim of achieving racial reconciliation, and that the humour was ineffective and that it missed the mark in its attempts to promote mutual cultural understanding. Furthermore, the promo violates the Broadcasting Code by "provoking hatred that is based on race".

(3) Insofar as hate speech is concerned, which is alleged to have been present in the material under discussion, the test is whether the material

broadcast amounts to the advocacy of hatred based on race, ethnicity, gender or religion and that constitutes incitement to cause harm. It is clear from the manner in which the material is presented in the promo that incitement to cause harm is entirely absent.

(4) In the promo, racial roles are deliberately reversed. The tone of the promo is set by the background music which is light and "upbeat". The opening image is of a man getting out of a bed in his township shack. The angle of the camera only allows the viewer to see a familiar image of boots being put on. The camera then pans to the man's face, and the surprise/shock appeal of the material kicks in as a young WHITE man is seen to go through the various motions of getting to work in a somewhat eventful journey from the shantytown to the city. Along the way, (white) schoolchildren tread the dusty streets to school, on the way encountering a Township Tour bus filled with the somewhat smugly smiling faces of well-to-do black women who point at the township sights. At no point, however, is hostility or resentment shown between the groups. The image is presented in an entirely matter-of-fact, if not bland, manner. The same is true for other events depicted, and the overall impact is to surprise the viewer into a new state of awareness: the young white township dweller passes next to a smartly dressed black woman in her luxury car, and as he does so, she immediately – and somewhat surreptitiously – locks the car door, clearly not wishing to provoke the person she stereotypes as a potential assailant. The young man has, incidentally, a wholly unthreatening appearance: he has a rather featureless face whose only obvious characteristic is his skin colour. This filmic device subtly emphasises the basic message of the promo: don't assume things about people simply from the colour of their skin. The latter point is emphasised in the shop incident where the young man is immediately regarded with suspicion by the shop owner, who calls the police when he enters, mistakenly assuming he is the criminal on a "Wanted" poster. Again, there is not the slightest hint of anger, aggression or resentment as the joke is on those who fall into the trap of racial stereotypes, people

ignorant of the uniqueness of individuals whom they assume are all the same, and behave the same, simply because they seem to "look the same".

(5) The promo is simultaneously poignant and funny, working on various subtle levels to arouse awareness and empathy with "the other". Its basic premise seems to be that putting oneself in the shoes of another (the racial "other" in this case) is a useful lesson in mutual understanding and tolerance. Along the way, it educates by focusing on various black cultural practices: street-dancing, hair-braiding – and in each case the race roles are cleverly reversed for impact.

(6) The promo may indeed give offence to those who fail to appreciate its satirical tone, but any accusation of hate speech should show clear understanding that "harm" must, in the interests of free speech, be interpreted to mean serious harm. Harm is not present where a complainant exhibits over-sensitivity. Mrs Hill concedes as much in her reference to "personal taste", and in her implicit reference to the guilt and fear experienced by white South Africans who may feel the impact of the promo in the "sensitive area" of perhaps having to face certain aspects of a past which is presented in a novel and surprising – perhaps even mildly shocking - way.

(7) The Tribunal concludes that the promo did not amount to hate speech as set out in section 16(2)(c) of the Constitution read with clause 16 of the Broadcasting Code. The mere fact that certain negative behaviour was depicted (white fear and insensitivity, predominantly), and certain (unfounded) perceptions regarding black criminality were portrayed, is insufficient to support such an accusation. The video exposes rather than promotes negative racial stereotypes, and instead of promoting race hatred or subverting reconciliation, the material under discussion is an effective attempt at promoting racial empathy, by employing gentle satire as a vehicle for mutual understanding.

(8) It is rightly held that freedom of expression lies at the heart of democracy - *South African National Defence Union v. Minister of Defence and Another* 1999(4) SA 469 (cc) at par. [7].

The complaint is dismissed.

L GILFILLAN
COMMISSIONER

2003-10-14

The Chairperson and Deputy Chairperson agreed with the above judgment.