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Case Number: 47/2004

Date of Hearing: 09 NOVEMBER 2004

K BROWN

Complainant

vs

M-NET

Respondent

TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Prof Ravi Nayagar (Viewer Listener Representative)
Dr Linda Venter (Co-Opted Member)

Complainant: The Complainant did not attend.

Respondent: Ms Samantha Britnell, programme Acceptance Manager, M-Net.

Gay rights – promotional material for post watershed slot not in contravention of Broadcasting Code. K Brown vs M-Net Case No: 47/2004.

SUMMARY

The Registrar received a complaint about a promo on M-Net. The Tribunal has viewed the material referred to and has come to the conclusion that it does not amount to a contravention of the Code. It most certainly advertises a post watershed show in which lesbianism is portrayed as normal and natural. This accords with section 9 of the Constitution which prohibits unfair discrimination based on sexual orientation. Although promotional material is judged according to stricter rules, the promo did not contravene those rules. It advertised a show which is perfectly compatible with the Constitution, which is the supreme law.

JUDGMENT

JCW van Rooyen, Chairperson

- [1] The Registrar received a complaint about a promo on M-Net.
- [2] The complaint read as follows:

“Complaint – Screening of trailer on M-Net, Friday 15 October 2004 at 17:57, “The L Word” – Choice of offensive subject material and inappropriate timing of the screening.I find the timing of the trailer relating to the advertising of the news programme, *The L Word* – which subject is Lesbianism, totally unacceptable.

The trailer was screened minutes after the Wildlife programme on Friday afternoon, which by nature is watched by thousands of South Africa’s young children. The timing of a screening of this type of trailer should be reserved for after 08:30pm, since the audience one would like to reach, surely would be adults?

Why then screen the trailer when one is aware of the fact that thousands of children will be exposed to the offensive and blatant lesbianism content shown in the trailer? This followed just after the wildlife programme, and also at a time when many mothers are cooking dinner – totally unaware of what their innocent children are, falling prey to. Our children are young and impressionable. Their rights are being violated, if they have to be exposed to this kind of adult and offensive content – their thoughts on life are being formed by this!

I am a parent of impressionable young children, and should have the right to allow my children to watch programmes suitable to their age, without the danger of them at the same time being exposed to age restricted subject matter in the content of trailers, over which I have not parental control at all.

This is not the first trailer which has offended me, or which has contained images not suitable for children.

I blame M-Net for regularly being irresponsible in showing of blatant adult content at a totally inappropriate time. We can have parental control over movies, etc. but what control do parents have over what their children are exposed to in trailer advertisement for up-and-coming programmes.

Surely these should then too have a parental block on them, or only be screened after certain hours. I am very upset that we as responsible South African parents do not stand together and fight the breakdown of moral standards in this country, which is happening every day through the open channel in our homes – the television – over which we do not have total control, proved by the example above. I feel my rights as a mother and protector of my young children have been violated. I look forward to hearing from you in this regard.”

[3] The Response from M-Net reads as follows:

“Background - The L Word is a new series, which can be seen on M-Net’s screen from 21st October 2004. Publicity Material - Herewith, please find the press release, which was distributed to all major newspaper and magazine publications.

Late night Lesbian Love on M-Net in the L Word

The 21:30, Thursday night timeslot on MNet is becoming synonymous with daring, high-quality, late night viewing. Until recently the channel filled this slot with the gutsy, Emmy award-winning, adult Western *Deadwood*. Now it’s the turn of *The L word*, a steaming hot lesbian drama with fascinating characters and engaging story lines.

The L word starts on Thursday 21 October at 21:30 and will be on M-Net until the end of January. The series has an age restriction of 16SNL and the first two episodes (October 21 and 28) form part of a two hour long pilot.

Renowned TV critic Tim Goodman described *The L world* as a “lesbian ‘Friends’ – only smarter and better.” He also said: “The L word goes boldly where other series have only flirted – to love and sex among L.A. lesbians” and praised this high-profile drama for its quality of writing and acting.

The L word revolves around the loves and lives of a group of women who get drawn into all kinds of sexy modern day intrigues in the City of Angels.

It all starts with Jenny Schecter (MIA KIRSHNER), a gifted young fiction writer who has just graduated from the University of Chicago, arriving in Los Angeles to start her adult life. She has a major literary award and one short story to her credit and at her side you’ll find her boyfriend, an anthropology student called Tim Haspel (ERIC MABIUS).

Tim resides in West Hollywood, next door to Bette Porter (JENNIFER BEALS from *Flashdance* fame) and Tina Kennard (LAUREL HOLLOMAN), two thirty-something professionals, who, after seven years together, are just beginning to navigate the choices and challenges that lesbians face when trying to start a family. They are also struggling with the direction of their relationship and what the future holds for them.

Bette and Tina’s close network of friends include Shane McCuthcheon (KATHERINE MOENNIG), a hairdresser and the resident heartthrob; Dana Fairbanks (ERIN DANIELS), a tennis pro not yet out of the closet; her bisexual pal, Alice Pieszcecki (LEISHA HARLEY); and Bette’s half sister Kit Porter, (PAM GRIER), who is a musician and a recovering alcoholic.

As the series unfolds, Jenny’s self-image and future plans are rocked from the foundation when, at a party, hosted by Bette and Tina, Marina Lombard (KARINA LOMBARD, *Legends of the Fall*), a beautiful and compelling café owner, makes a pass at her in the bathroom. Amid denial and confusion, Jenny starts to question her love for Tim and her attraction to Marina.

Meanwhile, Bette and Tina, stunned at how difficult it is to find a suitable sperm donor, attempt to seduce a handsome young artist on the night that Tina is about to ovulate. The seduction attempt fails, but the encounter is not without repercussions.

From tears to laughter, and hot scenes to intellectual moments, *The L Word* is compelling late-night tv.

On-Air Promotional Material -

For the on-air promotional campaign for “The L Word”, we made two different versions of the advert, which would be introducing our viewers to the show. We made a “soft” version, which would play out relatively early in the evening, and then a more explicit version, which would only play out after 21h00 in the evenings.

The version, which Mrs. Brown is referring to, is the softer version. On the tape that I have sent through to you, you will find both versions.

Action Taken - After having read Mrs. Browns complaint, and reevaluating our decision of when we would be screening the two different versions, we have made the decision to no longer promote this programme in Open Time.

The promotion of any on-air material relating to “The L Word” will only be broadcast after 21h00pm and not earlier.

Restriction decision - The series has been given a restriction of **16SNL** (sixteen for sex, nudity and language), and as such the promo reflects this restriction.

This restriction key of **16SNL** remains in the top, left hand corner of the screen for the entire duration of the on-air promotional material. This will also apply to the entire duration of each segment of every episode of the show.

PARENTAL CONTROL OPTION ON THE DECODER

With regards to the content of “Lesbianism” which Mrs. Brown finds unacceptable. The Parental control option on the decoder can be activated to block the programme from being viewed.

Each decoder contains a parental control mechanism. So, if parents wish to prevent their children, or anybody in their home from viewing any programme with content that they deem unsatisfactory, this mechanism can be enabled to block content that carries the selected age restrictions.

CLOSING COMMENTS - M-Net believes that by promoting the show in the time slot we did, that we did not breach the code of the BCCSA.

The 30 second advert we created, shows no nudity, sexual activity or bad language. Even though you can see two women about to embrace in a kiss, it is tastefully portrayed and is in line with the content and theme of the series.

To protect our more sensitive viewers, we have however made the decision to the promotional screen this material much later in the evenings.”

- [4] The Tribunal has viewed the material referred to and has come to the conclusion that it does not amount to a contravention of the Code. It most certainly advertises a show in which lesbianism is portrayed as normal and natural. This, accords with section 9 of the Constitution which prohibits unfair discrimination based on sexual orientation. Although promotional material is judged according to stricter rules, the promo did not contravene those rules. It advertised a show which is perfectly compatible with the Constitution, which is the supreme law.

The complaint is not upheld.

**JCW VAN ROOYEN SC
CHAIRPERSON**

Commissioners Nayagar and Venter concurred