BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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CASE NUMBER: 54/2004

DATE OF HEARING: 25 NOVEMBER 2004

J SADIE-WHITE **COMPLAINANT**

vs

94.7 HIGHVELD STEREO **RESPONDENT**

TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Dr Willem De Klerk (Broadcasting Representative)
Prof Henning Viljoen (Listener / Viewer Representative)
Prof Sunette Lötter (Listener / Viewer Representative)

Complainant: The Complainant did not attend

For the Respondent: Ms Pheladi Gwangwa (Regulatory Affairs Manager, Primedia Broadcasting (Pty) Ltd accompanied by Mr Ravi Naidoo, Station Manager, 94.7 Highveld Stereo.

Crude language in song – even if words offend, they do not necessarily amount to a contravention of the Broadcasting Code. There is a likelihood that the words, within the context, do not refer to feces, in any case. J Sadie-White vs 94.7 Highveld Stereo, Case No: 54/2004.

SUMMARY

The Commission received a complaint about the lyrics of a song called "Roses" by the group Outkast. The Complainant argues that she finds the song offensive and that she and all her female friends are outraged thereby, particularly the lyrics to the effect that the woman in the song thinks that her "shit don't stink". She is also aggrieved that the song is "enforced upon listeners several times a day".

The test that is applied is an objective standard of a reasonable listener who is broadminded. The BCCSA has quoted with approval the approach of the European Court of Human Rights in this regard: 'the price to pay for freedom of speech means being receptive to ideas that are not only displeasing, but that could often shock or offend'. This was echoed by the Constitutional Court, which further stated that "freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock, or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society." There is a likelihood that the words, within the context, do not refer to feces, in any case. The Complaint was not upheld.

JUDGMENT

VAN ROOYEN (Chairperson)

[1] The Registrar received a complaint against Highveld Stereo as a result of a song which was regularly broadcast.

[2] **The complaint reads as follows:**

> "For years I was an avid listener of Radio Highveld and remained loyal to the station after it became 94.7, entertaining us with great Disc Jockeys and music, appealing to young and old alike. What impressed me with the station was the goodwill it spread, it's charity drives and its sense of humour. Jeremy Mansfield sometimes pushed the boundaries but as an open-minded 32 year old, I always had a good chuckle. The point here, is that Jeremy never made a personalized and pointed song, enforced upon listeners several times a day, **naming** a woman who broke up with him. A woman, the singer sneers, who like to think her "shit her don't stink". I can assure you that I am not alone in finding this particular 'song' offensive. Without exception, all my female friends are outraged at the track and even my more scatological male friends have volunteered the opinion that the singer should take his breakup like a man, on the chin, just like all of them have had to do at some stage of their lives, rather then abusing his ability to reach thousands with music. Has anyone though to ask: "Who **is** Caroline?" There are sure to be those that know. And how must she feel hearing what has become a hit, simply because the singer has had the foresight to add a catchy tune to lyrics that are designed to be humiliating. In the lyrics, the singer also says he hopes she crashes whilst driving her car. (So because she broke up with him, she deserves to die, is that it?) And whether or not this particular Caroline actually exists, is not the point. Outcast are saying it's ok to speak about women in this derogatory manner and they use a powerful medium to do it. By listening to and plying this rubbish, we're not only agreeing with them, we're making them into stars.

And what about the other Caroline's out there? How many women want to be associated with "You like to think your shit don't stink, but come a little bit closer, you'll see roses really smell like pooh ooh ooh"?

Maybe there is a specific audience and a limited platform for Outcast, but on an inter-regional station with a broad-spectrum listenership including children? Suffice it to say that what **really** stinks is a bunch of talent-less and crass lowlifes getting airtime, instead of remaining deservedly, **Outcast."**

[3] **The broadcaster's response was:**

1. "Highveld Stereo received a complaint from one Joanne Sadie-White about the lyrics of a song called "Roses" by the group Outkast. Ms. Sadie-White says that she finds the song offensive and that she and all her female friends are outraged thereby, particularly the lyrics to the effect that the woman in the song thinks that her "shit don't stink". She is also aggrieved that the song is "enforced upon listeners several times a day".

2. Highveld Stereo is an adult contemporary format music radio station whose target audience are men and women aged 25 – 49 years old. It broadcasts hit songs and the hits are rotated[1] according to popularity. Roses, is hugely popular. It was voted number 2 by Highveld Stereo's listeners in both the Hot 30 Countdown and the Top 8@8, two of Highveld Stereo's programmes. The song was rotated four times a day, due to its popularity. The song is also a hit in the United States of America, Europe and Australia. It is also played by other South African radio stations such as 5FM, Metro FM, YFM and community stations such as TUKS FM.

3. The BCCSA Code of Conduct does not proscribe all content that listeners may find to be offensive, but that only such content that is offensive shall not be used in programmes specially designed for children or in programmes where a large number of children are likely to be in the audience. As stated in paragraph 2 above, Highveld Stereo's target audience is adult men and women. It has no broadcasts specially designed for children, nor are children likely to be in large numbers.

4. In addition, Highveld Stereo submits that in adjudicating on complaints relating to "offensiveness", the BCCSA should apply the legal test to such complaints. The test that should be applied should be an objective standard of a reasonable listener who is broadminded and not the subjective standard of a particular listener who complains. The BCCSA has acknowledged this much, when it said "our Courts have held, … that the test is that of the reasonable

[1] To rotate a song is to play it several times per day at certain predetermined intervals, depending on its popularity.

likely viewer…. the legal standard of reasonableness is based on the fictional, balanced viewer who is not overly sensitive [2]".

5. Highveld Stereo further submits that in adjudicating this complaint, the BCCSA must keep in mind the European Court of Human Rights' dictum that 'the price to pay for freedom of speech means being receptive to ideas that are not only displeasing, but that could often shock or offend'. This was echoed by the Constitutional Court which further stated that "freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock, or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society"[3]. Therefore, the duty of the Commission is to ensure that the broadcast did not violate its Code of Conduct or the Constitution, and not whether a particular listener found any broadcast to be offensive.

6. In addition, the BCCSA has considered the lyrics of the song in a complaint by Ms. van Niekerk and have found that "…although the word 'shit' does appear it loses its effect within the rest of the multitude of words. In isolation the words are offensive, but judged against the whole they lose their effect". The BCCSA therefore found that the Code has not been contravened in relation to the broadcast of the song."

[4] In so far as the complaint refers to the possibility that the woman referred to in the song might feel offended, we are not in a position to adjudicate this aspect since we do not know whether such a woman exists. We, accordingly, leave this aspect open. The woman involved – if she does exist – should complain herself on this score and prove that she is the woman referred to.

[5] As to the use of the word complained of, we agree with what the Respondent says in paragraphs 5 and 6 of its response. There is a likelihood that the words, within the context, do not, in any case, refer to feces.

The Complaint is not upheld

JCW VAN ROOYEN SC
CHAIRPERSON

Commissioners De Klerk, Viljoen and Lötter concurred.

[2] JE Glibbery, N Obel, J Swanepeol & Others vs SABC, 2000
[3] Quoted by the Commission in J Katz vs Highveld Stereo, July 2003