



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

Case No: 15/99

Date of Hearing: 6 May 1999

S.O.T.C.A

Complainants

v

M-NET

Respondent

In regard to the film DONNIE BRASCO

Commission: **Prof Kobus van Rooyen S.C.(Chairperson)**
 Prof Willem de Klerk
 Mr Barnard Mokwena
 Mr Ratha Mokgoathleng
 Prof Sunette Lötter

The Complainants indicated that they would not attend the hearing

Mr Anton Alberts, M-Net Manager, appeared from M-Net.

SUMMARY

Instances of taking in vain of the Lord's Name as well as a reference to the protection which the Mafia would give a member even against Jesus Christ, found not to be offensive in terms of the BCCSA Code. The context negated such a finding.

JUDGMENT

INTRODUCTION

The Respondent, a licenced broadcaster who has signed the Code of the Broadcasting Complaints Commission of South Africa in 1993, screened the film "*Donny Brasco*" well after the watershed.

The Complainants complained to this Commission about this screening and based their complaint on the taking in vain of the Lord's Name by characters in the film and a statement by a Mafia member that even Jesus Christ can't touch you now (that he has become a member of the Mafia).

The taking in vain of the Lord's Name has often been the source of complaints against material broadcast. It is, however, a fact that this kind of language forms part of the language of many people.

Within the arts and also in films producers have deemed it necessary to reproduce life as it is. Out of respect for viewers several countries have taken steps to ensure that this portrayal of reality does not reach a point where it, in fact, furthers evil or ultimately amounts to material which would offend religious groups.

On the other hand it has become abundantly clear that the right to information, freedom of speech and of the arts, as guaranteed by the Constitution of the Republic, cannot be ignored in the adjudication of these matters. In fact, limitations on these rights are only allowed in the circumstances sketched in Section 36 of the Constitution of the Republic of South Africa. These limitations would be the exception and not the rule. The rule centres on the guarantee of freedom. It is, of course, also of special importance that children be protected. Material which would fall in the XX category of the Film and Publications Act, would also not be allowed.

This Commission has laid down stringent rules that certain films should not be shown before the watershed. For subscription television the watershed is generally 20:00 and this lasts up to 5 o'clock in the mornings. This Commission has also made it clear that due warning on air as well as in publicity material is absolutely necessary. This publicity must include classification of the nature of possible problems in a film as well as the age restriction. The Respondent also provides its viewers with a parental mechanism which makes it possible for parents to exclude certain material from its TV.

Furthermore, the Respondent has a so-called green channel on which almost all crude and profane language is removed. A viewer has the choice to switch to the red channel where the film can be heard with most, if not all, of the crude and profane language included. Obviously some of this language would still be offensive in terms of the Code and accordingly it should be cut. Respondent has also informed us that it has appointed an advisory committee which classifies and restricts films as to age.

Returning to the present film, it is unnecessary for us to repeat what we said in our judgement concerning "Reservoir Dogs" (case no 97/27). Suffice it to say that the mere fact that the Lord's Name is taken in vain does not amount to offensiveness within the Code as influenced by Section 16 of the Constitution of the Republic. Given the time of the broadcast - well after the watershed - we have come to the conclusion that the taking in vain of the Lord's Name in this film amounts to a true and contextually justified portrayal of the characters involved. A husband and wife under enormous stress, a criminal who has no respect for God and talks and acts like a criminal. When this member of the Mafia mentions to the undercover agent that when he joins the Mafia not even Jesus Christ could touch him, this is obviously a shocking statement. On the other hand such a statement is typical of such a character and he is in no way portrayed as an ideal for the viewer. To let a character like that speak in soft, friendly and inoffensive language could easily distort the public's view of criminality. His language and his views fit this kind of character and, given the time of the broadcast and the context, it was found that in terms of the Code of the BCCSA the language and the observation are not offensive. Context saves it from a finding of offensiveness. Adults would realise this and tolerate it under the circumstances. Obviously there would be those who would not tolerate it, but in this instance context gets priority.

The complaint is dismissed.

**KOBUS VAN ROOYEN S.C.
CHAIRPERSON**