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CASE NO: 27/2001

DATE OF HEARING: 10 AUGUST 2001

**COCA-COLA SOUTHERN AND
EAST AFRICA (PTY) LTD**

COMPLAINANTS

vs

SABC

RESPONDENT

**TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
 PROF HENNING VILJOEN
 MS LARA KANTOR (CO-OPTED MEMBER)**

For the Complainant: Alex Maditsi (Legal Counsel), Vukani Magubane (Corporate Comm Director), Zanele Sisilana (Consumer Relations Manager), Tamania Motsepe (Assistant Communication), Jeanne Brown (Para Legal), Chris Gough (Asset Protection Manager), Dave Wilson (Investigative Consultant)

For the Respondent Mr. Mark Rosin from Rosin Wright and Rosengarten, Johannesburg accompanied by, from the SABC, Ms Sherelle Schmulian, Legal Advisor, Mr Louis Raubenheimer, General Manager, Audience Liaison and Mr Snuki Zikalala, Executive Editor, SABC News.

News- Accuracy – summarization creating impression that test by Bureau of Standards was final and that a bottle of lemonade had not been tampered with – purchaser alleging that condom wrapper was found in bottle – finding that summarization was in conflict with code – complaint of racism rejected – complaint that it had been incorrect to say that the

Complainant had not reacted to complaint of purchaser also rejected.(Case no: 27/2001 Coca Cola vs SABC).

SUMMARY

Complainant filed a complaint that the Respondent had incorrectly stated that tests had shown that the bottle of lemonade in which a condom wrapper had been found, had not been tampered with. As the copy of the Bureau of Standards test clearly stated that the test result was that it only appeared not to have been tampered with and that full tests would have to be performed to establish that it had not been tampered with, the BCCSA held that the complaint was justified. Correction ordered.

The BCCSA , however, also held that the statement in the insert that the company had failed to respond to the purchaser’s complaint would have been interpreted by a viewer in the context of the insert, which clearly indicated that there had been contact with the purchaser. It was also clear that the purchaser had been uncooperative in not having made the bottle available to the Complainant for proper testing.

BCCSA also holding that complaint that the Respondent had broadcast a comment by the purchaser that an employee of the Complainant had said to him that “Black people should not complain”, and that this amounted to an implication that the Complainant was racist, was not justified. It was clearly the statement of the purchaser, which would not have been taken seriously by viewers, since it was reasonably clear from the item as a whole, that the purchaser had been uncooperative and that the Complainant had not had an opportunity to react to this negative view of the purchaser. The matter accordingly remained open-ended and was not, in the light of the said conduct of the purchaser, of such a nature that the Respondent should have sought and broadcast the view of the Complainant on this comment. The said part of the item was, in any case, not the focus of the item as a whole.

JUDGMENT

JCW van Rooyen

On the 3rd of July 2001 the Respondent, which is South Africa’s public broadcaster, broadcast in at least two newscasts on TV, that a condom had been found in an unopened bottle of cool drink. The Cool drink was identified as a product of the Complainant’s company.

The transcript of the full item reads as follows:

“Newsreader: Finding the condom in a bottle of cool drink has proved a nasty shock for a Soweto man and to cap it all he is now embroiled in a row with the Coca-Cola Company.

Reporter: It was here at this spaza shop that Daniel Ndlozi bought a case of assorted cool drinks in February this year. When he arrived home, he found that a bottle of Sprite contained more than just cool drink. Also inside, was a government –issued condom still in its wrapper.

Daniel Ndlozi Disgruntled Customer: So, I took the receipt and I went to Coca-Cola Head Office and I spoke to a lady there, a representative of them. Well, the first time I went to her, she told me that people, black people shouldn't complain and all that. So, I thought well why not?

Reporter: Ndlozi says the Company has failed to respond to his complaint.

Daniel Ndlozi Disgruntled Customer: And besides, these people have quality controllers, you know. You don't expect something to leave the factory and straight to the consumer, why?

Kenny Mathivha, SABS: The glass that made the bottle is of the best standard of the best quality but the contents, therefore, should have gone through the quality assurance systems of the plant or the manufacturer of the bottle.

Reporter: The Bureau of Standards has examined Ndlozi's offending bottle of Sprite and has confirmed that it is sealed with no signs of having been tampered with. In a written statement, Coca-Cola says the chances of finding a condom in one of its cool drinks is extremely unlikely, as production procedures are rigorous. But Ndlozi has refused to hand the faulty bottle over to the company for testing. And so, Coca-Cola said there is nothing it can do about the problem. Rulami Baloyi, SABC, Johannesburg."

The Complainant Company pointed out that there had been three inaccuracies:

The summarization created the impression that the Bureau of Standards had found that the bottle had not been tampered with, whilst the report of the Bureau, which was handed in as evidence, only indicated that it had appeared not to have been tampered with. More comprehensive tests were necessary to establish finally whether this had been the case. The purchaser had, however, adamantly denied the Bureau the opportunity to break the seal of the bottle so as to conduct such a full test.

The Bureau's full report reads as follows:

"FOREIGN OBJECT IN A SPRITE BOTTLE

The SABS was contacted today by Mr. Sbongile Ndlozi, of 23 Quince Street, Brackendowns, Alberton about a foreign object contained in a sealed bottle of Sprite. The SABS was asked to verify that the seal on the bottle appeared intact and to consider possibilities resulting in the object being in the bottle.

Mr Andries Marais, a Manager in the Test House of the SABS, performed a visual inspection and confirmed the following:

- The 1,25 litre SPRITE bottle contained an aluminium package that appeared to be an opened condom package.
- The seal on the lid appeared to be intact.
- The seal of the lid does not appear to be perforated.
- The cool drink inside the bottle is clear with no signs of carbonation.

Based on the visual inspection of the bottle, it appears that the bottle has not been opened or tampered with.

However, in order to provide a more comprehensive test report, it would be necessary to conduct more extensive tests. One of these would be a torque test on the lid of the bottle. In order to determine the

effectiveness of the seal, it would require the opening (breaking the seal) and closing the bottle, with the same lid. Ms. Ndlozi was however adamant that the SABS could not break the seal on the bottle, to determine its integrity.

The contamination of the cool drink could have been the result of any of the following:

1. The object was in the bottle when it was returned and the object was not removed in the wash process.
2. The object was inserted in the bottling process as sabot age.
3. The object was inserted by opening the bottle and closing (sealing) it again.”

From the above it is clear that the summarization by the SABC had been materially incorrect. It created the impression that the Bureau had “confirmed that the bottle was still sealed with no signs of having been tampered with”. That this conclusion was not reached by the Bureau, clearly appears from the full text quoted above. That the news item accepted that there had been a “fault”, also appears from the second last sentence of the insert, where the bottle is referred to as a “faulty” bottle. That the bottle seemed to have been “faulty” clearly appeared from shots of the bottle which showed material which looked like a wrapper inside the bottle. But, whether the “fault” could *conclusively* be attributed to the Complainant had, of course, not been established by the Bureau. Since this was not stated, the summarization was substantially incorrect in that it created the impression that the fault had been attributable to the Complainant Company. The mere idea that a condom wrapper had found its way into a sealed bottle of *Sprite* and that the Bureau had found that the bottle had not been tampered with, would create a sense of distrust in the minds of many viewers. The fact that the purchaser had not, according to the news insert, been prepared to hand the bottle over to the Complainant for testing and that the Complainant had not had the opportunity of testing the bottle, was balanced out by the incorrect statement that the Bureau had found that the bottle was still sealed and that it had no signs of having been tampered with.

The complaint is accordingly upheld on this point.

Secondly the Complainant argued that the Respondent had incorrectly stated that it had failed to respond to purchaser’s complaint. Mr Maditsi argued that proper consultation with the Complainant would have shown that there had been a response and that the matter was and did get the attention of its Complaints Department as well as its Communications Department.

We do not agree. Although the insert states that the purchaser said that the Complainant had failed to respond to his complaint, it is clear from the rest of the insert that the purchaser had been uncooperative in not having handed the bottle to the Complainant for proper testing. The last sentence in the insert was: “But Ndlozi (the purchaser) has refused to hand the faulty bottle over to the company for testing. And so, Coca-Cola said there is nothing it can do about the problem.” The reasonable viewer would not blame Coca-Cola for not having responded fully. It was clear that there had been some communication – in fact the purchaser’s on-air comment clearly illustrated that communication had taken place more than once. However, his denial of the opportunity for the Complainant to test the bottle, would have seemed quite unfair to a reasonable viewer. It conveyed that attempts by the Complainant to deal with the complaint were made difficult by the attitude of the purchaser. Of course, it was also clear that no consequential damages had followed upon the purchase. The bottle was still “sealed” and no one had, accordingly, consumed the contents or a part thereof.

This complaint is dismissed

The third complaint was that the insert had implied racism on the part of the Complainant. The insert conveys the following words of the purchaser: “Well the first time I went to her, she told me that people, black people, shouldn’t complain and all that. So, I thought, well, why not?” Mr Maditsi strongly argued that the circumstances clearly showed that this could not have been true. All the personnel involved in the complaint from the purchaser were Africans and would not react in such a manner. Mr. Rosin competently argued that the SABC had not been racist by broadcasting this insert. The SABC was fully committed to transformation and would not, in this manner, attempt to prejudice race relations. There was also no indication that the SABC had, in any way, associated itself with what the purchaser had said.

The complaint in reality boils down to an accusation against the SABC for not having afforded the Complainant the opportunity to respond to the statement of the purchaser. It would then have been in a position to inform viewers that the personnel who had dealt with the complaint of the purchaser were unlikely to have said this and that Coca-Cola was also

committed to transformation : in fact that the African personnel who dealt with the complaint would never had reacted in this fashion.

Our view is that the SABC did not broadcast the reference to race to prejudice race relations. It simply conveyed what the purchaser felt. It was not necessary to have obtained the view of the Complainant on this matter. The purchaser's uncooperative attitude to the matter was clearly illustrated by his denial of proper inspection by Coca-Cola. A reasonable viewer would not simply accept his (racial) statement on face value. He or she would realize that the statement amounts to the purchaser's view on the matter and that the other side of the story had not been told. We are of the view that this low-key, one-sided, untested observation from the purchaser, would not be taken seriously by the reasonable viewer. Had this been at the core of the insert, the SABC would have been obliged to have obtained the response of the Complainant. However, this was not so and no such duty arose. Such a duty would only arise if the matter of race had been accentuated as a view of the SABC itself, or had been conveyed by the SABC as an incontrovertible fact or had been raised to the level of controversy by the insert.

The complaint is also dismissed on this point.

Although this point is not necessary to decide, it was argued by Mr Rosin on behalf of the SABC, that trading companies should not expect the SABC to act as a public relations medium for them. Whether Coca-Cola had such expectations from the SABC, was not addressed by Mr Maditsi. However, it might be conducive to the understanding of the role of broadcasters to comment on Mr. Rosin's argument. News can only be effective if it holds the attention of its viewers or listeners. Lengthy descriptions become boring and do not live up to the expectations of the viewer or the listener, who wishes to get to the core of the news in a short period of time. It would, accordingly, be unrealistic to expect a newscaster to convey all the details of a matter. Viewers realize this function of news and the above judgment has given due weight to this material element of and requirement for news.

As to sanction, it is clear that the SABC has not acted with malice. Nevertheless, the journalist had simply not summarized the SABS report correctly. This mistake is, of course, quite serious, given the fact that the product is made for human consumption and that many consumers could lose trust in a distributor which would allow foreign elements to remain in or enter a container during the process of manufacture. A reasonable journalist would not have made the same error and would have realised that the wording of the Bureau statement was of particular importance. Accordingly, the mistake was a negligent one.

The *prima facie* view of the Tribunal Members was that if the Complainant required the Respondent to broadcast a correction, the Commission would order the SABC to do so. The question, however, arose whether the Complainant wished to have the whole matter resuscitated by way of a correction on air.

We accordingly granted an option to the Complainant as to whether it required such a correction. We have been informed this morning that the parties have settled the matter and that no correction need be broadcast. We agree with this approach and the matter is regarded as closed. The mere fact of the finding against the SABC on one of the three complaints is regarded as a sufficient sanction in this matter. Obviously, we also expect the Respondent and other broadcasters to take guidance from this judgment.

In conclusion: The first complaint is upheld and the other two complaints are dismissed.

JCW VAN ROOYEN SC
CHAIRPERSON
4 September 2001

The two other Commissioners concurred in the above judgment.