

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 26 July 2007

Case number: 7/ 2007

Blanckenberg

Complainant

vs

SABC

Respondent

Complaints and Compliance Committee Panel

E. K. Moloto- Stofile	(Chairperson)
S. Thakur	(CCC Member)
N. Ntanjana	(CCC Member)
D. Moalosi	(CCC Member)
J.C.W. Van Rooyen SC	(Councillor on the CCC)

The Complainant in Person

For the Respondent

Mr Eric Mabuza (attorney) and from the SABC Mr. Fakir Hassen

¹ In terms of s 17C of the ICASA Act 13 of 2000 as amended

SUMMARY

A complaint that the SABC contravened the Broadcasting Act and Regulations concerning sponsorships and commercial interests in public affairs programmes, was dismissed by the Complaints and Compliance Committee, established in terms of the ICASA Act. The fact that the guest in the studio during a *Praatsaam* programme on RSG was in the employ of *Old Mutual* did not compromise the independence of the SABC as a public broadcaster. The references to *Old Mutual* merely served to disclose the commercial interest of the guest to listeners. They were entitled to such a disclosure. In any case, the references to *Old Mutual* did not subordinate the interests of the programme itself to those of *Old Mutual*. The advice given by the guest was, at all times, objective and addressed pension and investment funds on a wide and informative level. The programme was, in any case, sponsored by *Bokomo Foods* and not by *Old Mutual* in spite of an unsubstantiated claim by a caller who inferred that *Old Mutual* was sponsoring the programme. The sponsorship of *Bokomo Foods* was disclosed at the commencement of the programme. *Bokomo Foods* has no interest in the marketing of pension or investment funds. It markets cereals.

JCW VAN ROOYEN SC

[1] The complainant, Ms. Blanckenberg, has been in a dispute with the SABC, the public broadcaster, since 1995, after a programme was presented by *Radio Sonder Grense* (“RSG”), a radio service which broadcasts in one of the eleven official languages, Afrikaans.² The programme, *Praatsaam*, is presented on weekdays just after the 08:00 news until 09:00. It usually addresses a topic of general interest and there is usually a guest in the studio who answers questions from callers.

The Complaint

[2] Ms Blanckenberg’s complaint reads as follows:

PUBLIC RADIO: COMPROMISED EDITORIAL CONTENT

² Afrikaans, said to be the most modern Germanic language, owes its origins to Dutch. The Dutch were the first persons from Europe to settle here permanently after 1652.

I am of the opinion that listeners are sometimes subjected to promotional presentation in programming time intended for editorial actuality content. Previous efforts to approach the SABC on this matter ended in nothing more than blunt denial.

A recent example in my opinion, was the actuality programme Praat Saam on RSG, 8 August 2005, 8:05. One only needs to compare this example with any sample from its sister programme on SAFfm, *The After Eight Debate* 8:05 on weekdays, to note the difference in emphasis on editorial and advertorial. In this specific case the topic was insurance umbrella coverage vs. other. The guest was a marketing manager of an umbrella product from Old Mutual. My phone-in call went directly on air and I asked the presenter to be more transparent about the visit of his guest ("om oop kaarte te speel") as I heard the programme as being nothing more than promotion for Old Mutual. My call was cut off and only responded to at the end of the programme by way of a negative remark from the presenter. He then stated for the record that the guest did not pay for air time ("vir lugtyd betaal"). I used these words to illustrate my disapproval of such commercial tender, although I am aware of the fact that "compensation" for such exposure can be much more complex than that.

In terms of the SABC Charter, public radio "... enjoys freedom of expression and journalistic, creative and programming independence." The general expectation exists that public radio distinguishes itself by independent journalistic quality. If below-the-line advertising is allowed to sneak or step in the audience is a sitting duck. The unaware listener becomes a soft-targeted consumer without even knowing it. Blurring or relaxing the line between editorial and advertorial creates an opportunity for business not only to move in but moreover, to set the agenda.

The quality of public radio is already compromised by allowing unlimited above-the-line advertising time on radio. For quality programme content to be maintained, independence from commercial pressure should be upheld as strongly as independence from political pressure.

Looking at some of the structures put in place to ensure quality and independence from commercial interest I found the following:

1. The IBA Act

Chapter VII. Section 57 *Control over advertisements* does not seem to make provision for handling below-the-line advertising.

2. The Broadcasting Act

Chapter IV. Part 2. Section 8 (e): *To be responsive to audience needs And account on how to meet those needs*

Chapter IV. Part 3. Section 10(c): *strive to be of high quality in all of the languages served*

Section 10(d): *provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interest.*

3. SABC Editorial Policies

News Programming: The Sacs Mandate

4. SABC Editorial Code of Practice

(1) Core Editorial Values of the SABC:

Editorial Independence: Accountability; Transparency

(2) The Code of Practice

I would like to ask the committee to investigate whether the submitted example meets the intended standards for public radio.

Jurisdiction

[3] Ms Blanckenberg filed her complaint with the Broadcasting Monitoring and Complaints Unit of the Independent Communications Authority of South Africa ("ICASA") in August 1995. She conveyed in her telephonic address during the hearing that she, at first, considered filing a complaint with the Broadcasting Complaints

Commission of South Africa, but after studying its Code had come to the conclusion that the Code did not address her problem. She came to the same conclusion on the Code of the Advertising Standards Authority. She, accordingly, based her complaint on the Broadcasting Act 4 of 1999, internal policies of the SABC and, ultimately, also regulations quoted hereunder.

[4] It was not contended by the SABC that the complaint does not resort within the jurisdiction of the CCC on the basis that it should have been lodged with the Broadcasting Complaints Commission of South Africa (BCCSA). The BCCSA is an independent adjudicating body originally set up by the National Association of Broadcasters (NAB) in 1993 and hears complaints in terms of its Code and procedural structure as approved by the Independent Broadcasting Authority in November 1995 in terms of section 56(3) (now section 54 of the ECA) of the IBA Act 1993. All broadcasters which are members of the NAB may consent to the jurisdiction of the BCCSA. In practice all the members of the NAB, including the SABC, have agreed to the BCCSA jurisdiction. The BCCSA deals with complaints which fall within its Code. Except for internal advertising by a broadcaster, the BCCSA does not deal with complaints about advertising. Complaints in this respect fall within the jurisdiction of the Advertising Standards Authority, which is also a non-statutory adjudicator, which is provided for in terms of section 55 of the ECA Act 2005, previously section 57 of the IBA Act 1993. Election advertisements and disputes are dealt with by the CCC. The BCCSA Code does not deal with general duties imposed by the ICASA Act and the underlying statutes. Any complaint which is, however, brought in terms of the BCCSA Code of Conduct for Broadcasters against a broadcaster which has subjected itself to the jurisdiction of the BCCSA, will not be heard by the CCC, since it would fall under the jurisdiction of the BCCSA.

[5] The Complaints and Compliance Committee (CCC), an independent³ complaints committee established by ICASA, the task of which is to adjudicate the merits of complaints and then to recommend to the Council of ICASA what sanction to impose, is the successor to the Broadcasting Monitoring and Complaints Committee, which was

³ As to its independence see *Monitoring and Complaints Unit of the ICASA v Radio Mafisa (case 1 of 2007)* –available on the website of ICASA at www.icasa.org.za

established by the IBA (now ICASA) in terms of the Independent Broadcasting Authority Act 1993 (IBA Act). It was, rightly, not disputed that the CCC has jurisdiction to deal with complaints which were lodged before it was established in terms of the ICASA Act 13 of 2000, as amended in 2006. The CCC is empowered to deal with complaints (except those which fall under the jurisdiction of the BCCSA or the ASA) received by it in terms of the ICASA Act or the underlying Statutes, which includes the Broadcasting Act 1999. Section 95 of the Electronic Communications Act 36 of 2005 (ECA) provides that all regulations issued by the IBA or ICASA remain in force until repealed by ICASA. The regulations referred to hereunder were in force during the broadcast of the programme.

[6] Although Ms Blanckenberg's complaint also referred to the internal policies or codes of the SABC, she rightly conceded during the hearing that those policies and codes could not form the basis for a complaint which could be adjudicated by the CCC or, for that matter, any judicial body. Those Codes are part of the rules that the SABC applies internally.

[7] The complaints filed by Ms Blanckenberg are governed by two provisions, on which the CCC may adjudicate:

Section 10(1)(d) of the Broadcasting Act 1999 which provides as follows:

The Corporation must provide significant news and public affairs programming which meets the highest standards of journalism as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests.

Clause 3.3 of the IBA Regulations relating to Advertising, Infomercials and Programme Sponsorship, 1999 provides as follows:

Any broadcaster who transmits...a sponsorship element in the form of on-air depiction of, or referral to, any brand, product or name, shall ensure that the primary purpose of the broadcast of such material is to promote the broadcaster or the programme concerned, rather than the commercial interest of the person, product or service referred to in the course of such transmission.

Clause 5.7 of the same Regulations provides as follows:

Product placement in programming other than news and current affairs shall be subordinate to the content of the programme material.

The Programme

[8] The programme, which is the subject of this adjudication, dealt with pension funds and the like. The host introduced his guest as the marketing manager of *Old Mutual's*

Evergreen Umbrella Fund. During the programme which, including advertisements lasted more or less 50 minutes, the host repeated the designation of the guest on three occasions, after advertisement breaks. At the end of the programme the designation was repeated and listeners were given the email address of the guest for a further opportunity to ask questions.

Evaluation

[9] During the programme several questions from anonymous callers were broadcast live. One caller (who succeeded to get through twice) was quite aggressive. He asked the guest to disclose whether he was a broker – clearly implying that the guest was not objective in his advice and masquerading as a manager. The guest immediately answered that he was not a broker and was the Marketing Manager of the *Evergreen Umbrella Fund* of the *Old Mutual*. Another anonymous caller (who, it now appears, was Ms Blanckenberg) requested the presenter to be frank with the listeners. She inferred (ek “hoor” – which, in the circumstances, means she infers) that the programme was sponsored by Old Mutual and that this should be disclosed to the listeners. The presenter responded that he noted her point. Ms Blanckenberg claims that she was then cut-off. At the end of the programme the presenter stated that *Old Mutual* had not sponsored the programme and that the point made by the anonymous caller (Ms Blankenberg) was, accordingly, incorrect. During the hearing of the matter, Mr. Fakir Hassen, Regulatory Manager of the SABC, confirmed through Mr. *Mabuza* that the programme was not sponsored by *Old Mutual*. This is, of course, correct since at the commencement of the programme the presenter stated that *Bokomo Foods* was sponsoring the programme. One advertisement in the advertisement break, halfway through the programme, was also for Bokomo breakfast foods.

[10] An analysis of what the guest said demonstrates that he remained particularly objective throughout the programme. He was clearly aware of the fact that he was not permitted to promote *Old Mutual* and never did so. He informed listeners on umbrella funds and illustrated the services which are delivered. Since umbrella funds are provided by several registered financial institutions, it would be unfair to infer that he was promoting *Old Mutual*. Of course, listeners knew that he was in the employ of *Old Mutual* and there could have been a minor benefit for *Old Mutual* in his participation.

Given the critical nature of at least three calls, it is a question whether his participation was, in fact, to the benefit of *Old Mutual*. He had, as it were, entered a lion's den where, except for one or two callers, callers were attacking and questioning a variety of pension funds and, in two cases, critically referred to him and in one case questioned his objectivity as a result of the unjustified sponsorship inference by Ms Blanckenberg. The guest constantly advised callers and the public that they should seek advice from experts, that they should check the credentials of agents, that they should ensure that they remain informed about the growth, if any, of their investments aimed at retirement, that the Financial Services Board regulated the funds and that although this was not the case in the past, complaint procedures and sanctions against transgressors were now in place.

[11] Section 10(1) (d) of the Broadcasting Act relates only to news and public affairs programming. The only question would be whether the programme was a "public affairs programme". "Public affairs" would be such affairs which are in the "public interest". "Public interest" does not, of course, mean that which is "interesting" to the public. In *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another*⁴ Corbett CJ said:

- (1) There is a wide difference between what is interesting to the public and what it is in the public interest to make known . . .
- (2) The media have a private interest of their own in publishing what appeals to the public and may increase their circulation or the numbers of their viewers or listeners; and they are peculiarly vulnerable to the error of confusing the public interest with their own interest. . . .

Praatsaam might, at times, amount to a "public affairs" programme. This would be the case where it addresses a problem of national magnitude or interest. The subject of investment funds is, of course, of particular interest to the public and falls within the duty of the SABC to inform and the right of the public to be informed in terms of section 16 of the Constitution of the Republic of South Africa. However, to classify the programme under consideration as attaining the level of a "public affairs" programme, would amount to escalating it to a level which it undoubtedly did not strive for or have. The programme is exactly what it professes to be in its title: *Praatsaam*, which, in the context, means to participate in a debate on a subject that usually turns out to be of interest. To expect such a call-in programme to rise to the level of "balanced reporting" as required by clauses 35 and 36 of the Broadcasting Code, would be unrealistic. Those provisions require balance

⁴ 1993(2) SA 451 (A) at 464C-D.

when matters of public importance (which, in the context, means “public interest,” as defined above), are broadcast.

[12] Even if the *Praatsaam* issue under consideration amounted to a public affairs topic, there was no reason to doubt the integrity and independence of the advice given. In fact, the SABC was honest about the position of the guest. The disclosure of his position provided perspective to the listeners. They had a right to know from whom the advice came and they were told that he is commercially involved in the field. However, it was clearly stated that the programme itself was not sponsored by *Old Mutual* and at no stage did the guest, in his advice, give preference to *Old Mutual*. In fact, as indicated above, it was a risk for *Old Mutual* to provide a guest to a programme, which it must have known could open the opportunity for callers to hit out at *Old Mutual*. In fact, on three occasions suggestions which attempted to denigrate or question *Old Mutual* and the guest were conveyed by callers. In any case, the programme was sponsored by *Bokomo Foods* as stated at the commencement of the programme. The commercial interest of *Bokomo Foods* was not promoted in the programme. The independence of the SABC was, accordingly, not compromised at all by the sponsorship of *Bokomo Foods*, which is a provider of a variety of cereals. The involvement of the guest also did not compromise the SABC’s independence. The guest remained objective throughout the programme. His attachment to *Old Mutual* was, for purposes of this programme, of no consequence; in any case not in so far as it could have compromised the independence of the SABC.

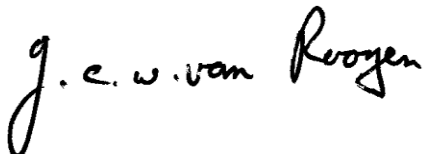
[13] As to the Regulations quoted above, it is clear that clause 3.3 permits sponsorship or reference to a “brand, product or name”, provided that the broadcaster “shall ensure that the primary purpose of the broadcast of such material is to promote the broadcaster or the programme concerned, rather than the commercial interests of the person, product or service referred to in the course of such transmission.” As said above, the sponsor was only mentioned at the commencement of the programme. It has no direct commercial interest in investment funds. It produces and markets cereals. There was reference to *Old Mutual Evergreen Umbrella Fund* on four occasions when introducing and re-introducing the guest. As stated above, the SABC had a duty to disclose his interest. However, except that he pointed out the benefit of an umbrella fund for employers who do not have

thousands of employees, this benefit was not necessarily connected to *Old Mutual*. He never said that listeners should approach *Old Mutual*. According to the tradition of the programme, he was available to take further emails from listeners. The line of advice which he gave was of a general nature and, in no way, the primary purpose of the broadcast – advice to consumers – was lost and did it primarily serve the commercial interests of *Old Mutual* or *Bokomo Foods*. Clause 3.3 was, accordingly, not contravened by the Respondent.

[14] In so far as clause 5.7 of the Regulations is concerned, references to product placement of *Old Mutual* were subordinate to the content of the programme for the same reasons mentioned in paragraph [13] above. In fact, “subordinate” is too strong a word to use. The product of *Old Mutual* could only on a *possible* level have gained. In fact the product placement was minimal compared to the advice on investment funds of a wide range. It is, in any case, doubtful whether, given the critical approach of three calls, *Old Mutual* gained at all. Listeners, most certainly, gained: they were advised on a wide front and in an objective fashion.

The complaints are dismissed.

The Chairperson and Committee Members N.Ntanjana, D.Moalosi, S.Thakur concurred.



For: CHAIRPERSON OF THE CCC

14 August 2007