CASE NUMBER: 13/2012

DATE OF HEARING: 02 MARCH 2012

B VAN STADEN COMPLAINANT

VS

MULTICHOICE CHANNEL 126 (SONY MAX) RESPONDENT

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
PROF HENNING VILJOEN (DEPUTY CHAIRPERSON)
DR NANA MAKAULA
MR BRIAN MAKEKETA
MS SHAMILA SINGH

Complainant: The Complainant appeared in person.

Respondent: Mr Bruce Mkhize, Regulatory Compliance Manager, Regulatory Affairs, accompanied by Mr Gregory Bresies: Manager Consumer Electronics, Southern Africa, Multichoice.

Complaint about a close shot of full frontal male genitalia in the context of a comedy gambling game show – show classified as PG13 – broadcaster admitting to error in classification and admits that classification should have been 16 – broadcaster accepting responsibility for wrong classification by foreign channel that it has bought - contravention of clause 17 of the Code of Conduct found – complaint upheld - B van Staden/ MultiChoice Channel 126 (Sony Max) 13/2012(BCTSA)

SUMMARY

This case deals with a complaint about a close shot of full frontal male genitalia in the context of a comedy gambling game show where the viewers are invited to place
bets on which one of 5 young men has the longest penis. The show is classified as PG13. After the complaint was received, the broadcaster admitted to an error in the classification and admitted that the classification should have been 16. Although the inappropriate classification was done by the foreign channel, the broadcaster accepted responsibility for the wrong classification by the foreign channel that it had bought. A contravention of clause 17 of the Code of Conduct was found and the complaint was upheld.

JUDGMENT

PROF HENNING VILJOEN

[1] This is a complaint about the undue display of genitals in a comedy gambling game show broadcast at 21:30 on 27 January 2012. The cause of the complaint is a close shot, although quite brief, of a man’s penis.

[2] The complaint reads as follows:

“I want to lodge a complaint with the BCCSA for the following:

Program: Banzai, Channel: SONY MAX channel (DSTV 126), Date: Friday 27th January 2012, Time: +/- 21:30 to 22:00

On the channel a PG13 warning showed on the top right hand side during the program. At a stage a scene appeared where 5 men stood in a row with only their underpants on (like a police identification scene). The viewer now had to guess who has the biggest “package” (genitals). After the camera focused on each person individually, they revealed who had the biggest package. They then went a step further and showed the genitals in question for about 5 seconds. We fortunately have no children, but if we did, what use would the PG13 have been. I feel it is extremely inappropriate to show scenes like these where most people have access to it.”

[3] Multichoice responded as follows:

“COMPLAINTS REGARDING THE PROGRAMME “BANZAI”

1. INTRODUCTION

1.1 We refer to the complaint from Bejamin van Staden regarding the show Banzai, which was broadcast on channel 126 (Sony Max) on 27 January 2012 at 21h30.

1.2 The Complainant objects to the nudity on the show and the classification which he believes was inappropriate for the show.

1.3 We have been requested by the Office of the Registrar to respond to the complaint taking into account provisions of the Code dealing with Classification.

2. THE PROGRAMME AND THE COMPLAINT
2.1 *Banzai* is a British comedy gambling gameshow spoofing Japanese gameshows and general television style. Each segment of the show is a silly or bizarre contest.

2.2 The show plays off like a betting show. In each segment, a bizarre challenge is presented with a choice of outcomes. Members of the viewing audience are encouraged to bet with each other on the outcome of each segment. Viewers are given a short amount of time to ‘place their bets’ before the challenge starts.

2.3 Betting contests on the show include grannies playing chicken with motorized wheelchairs, how many balloons it would take to lift up a chicken, to guess which person in a lineup has the longest penis etc.

2.4 The Complainant object to the scene showing genitals of the male participant and that PG 13 was inappropriate.

3. **OUR RESPONSE**

3.1 Multichoice concedes that the classification of PG13 was not suitable for the episode in question and it was due to an error on the side of the channel provider.

3.2 Multichoice however request the commission to take into account the following:

3.2.1 The show was broadcast long after the watershed period had commenced, at 21:30.

3.2.2 It is unlikely that a number of children would be up and watching television at that time of the day.

3.2.3 The scene that is subject of the complaint was fleeting and lasted less than five minutes.

3.2.4 The nudity was not of a sexual nature but was within the context of a bizarre competition.

4. **CONCLUSION**

4.1 We apologise to the complainant for the inconvenience caused.

4.2 As indicated above, the classification of PG13 was an error on the part of the channel. In future the episode will be classified with 16 age restriction.”

[4] The scene or shot complained of, was broadcast in the context of a comedy betting game show in which the audience has to bet on which of five young men has the biggest genitals. The five young men stand in a row, facing the camera,
dressed only in small tight-fitting, speedo underwear of different colours. From the bulges that are visible, it is not possible to decide whose penis is the longest. After the betting has closed, the first man steps forward, puts his hand inside his speedo and pulls out an object. The purpose of the object was obviously to make his genitals seem larger. He then steps back and the second man comes forward. He too puts his hand inside his speedo and also pulls out an object. The same observation can be made about this scene. Up to this stage, no genitals are visible.

[5] When the third man steps forward, he does not put his hand in his speedo, but he pulls it down and exposes his (very long) penis in a close shot full in the face of the viewers. The scene lasts only a few seconds, but the shot is close enough to make a lasting impression on the viewer. Thereafter the third man is declared the winner. One has to conclude that the remaining two men have shorter penises, so the viewer is spared further shots of genitals.

[6] This programme carried a PG13 warning to the viewers. The complainant calls the scene in question “inappropriate” for such a low age restriction. The broadcaster admitted that the classification of PG13 was an error on the part of the channel and that the warning should have been no children under 16. The “undue display of genitals” brings the scene in question within the ambit of “sexual conduct” in clause 4.11 of the Code of Conduct. However, this clause of the Code was not argued at the hearing, and the broadcaster did not have the opportunity to challenge this argument.

[7] The contravention of the Code, in this instance, lies in the fact that the classification of the show was inappropriate. In this context clause 17 determines, inter alia: “The classification must indicate the appropriate age restriction for viewing … a programme” (my emphasis). The broadcaster has admitted that the classification of the programme was not appropriate and by that has admitted to a contravention of the Code. Although the broadcast was at about 21:30 in the evening, in other words after the watershed period, the close shot of a full frontal,
“in your face” penis was offensive to the viewers, even the broadminded, balanced and not oversensitive ones. Because it was a Friday evening, it is possible that some children over 13 years were in the audience. In this instance a 16 classification would have served as some warning to viewers of what they could possibly expect to see in the programme.

[8] The admission by the broadcaster that the channel committed an error, brings up another matter that has to be dealt with. In the same session of Tribunal hearings, this whole matter of MultiChoice’s (the Respondent’s) responsibility for the classification of programmes that they deliver to their subscribers’ television screens was debated. In the other judgments on the complaints heard at the same Tribunal session, this matter will be dealt with. Suffice it to say that the broadcaster at this hearing assured the Tribunal that MultiChoice accepts responsibility for the classification of programmes, even those broadcast through a foreign channel. We, accordingly, find that the Respondent has contravened the Code.

[9] This brings us to the question of sanction. In previous complaints of this nature against broadcasts by MultiChoice, the arguments turned around “human” and “technical” errors. In this instance we are dealing with human error. In an adjudication that I did, involving the same Respondent, regarding the film “What Planet are you from?”, adjudication no. 33/A/2011, I referred to previous instances where the excuse was human error. I referred to case no. 17/2009 T Neethling v MultiChoice (Channel 125), adjudication no. 56/A/2010 “Zero Hour” broadcast by MultiChoice and case no. 9/2011 Rundle & Edelinski v MultiChoice Channel 111. In the three last mentioned cases the classification was wrong and the broadcaster admitted to this. In adjudication no. 33/A/2011 a fine of R 20 000 was imposed because of the culmination of repeated contraventions for wrong classification or errors in the classification by MultiChoice.
The matter of sanction was not argued at the hearing. In fairness to the broadcaster, we will allow written submissions regarding mitigation and aggravation of sanction, respectively, within 7 days.

In the result it is found that clause 17 of the Code of Conduct has been contravened and the Tribunal awaits written argument regarding mitigation and aggravation, respectively, of sanction.

JCW VAN ROOYEN SC
CHAIRPERSON

The Chairperson Van Rooyen SC and Commissioners Makaula, Makeketa and Singh concurred in the above judgment by Prof Viljoen.

ADDENDUM TO JUDGEMENT

We are in receipt of the Broadcaster’s arguments in mitigation of sanction. We have not received arguments in aggravation of sanction from the Complainant within the time limit set in the judgment. We now have to decide on the sanction to be imposed.

We have considered the Broadcaster’s arguments. It is true that the broadcast in question was well into the watershed period, although we referred to the fact that it happened on a Friday evening and it is possible that children might still have been in the audience.

As for the nature of the content, we agree that the scene occurs in a programme where the context is not concerned with sexual conduct. On the other hand, if it were concerned with sexual conduct and had artistic or dramatic merit, it would have been exempted in terms of clause 11 of the Code.

We also take note of the fact that the Broadcaster has apologised to the Complainant and to the Commission.
We do have problems, though, with the recurrence of contraventions in this regard. The Broadcaster asks of us to consider the fact that it operates in a “multichannel subscription environment”. Because MultiChoice, at the hearing, accepted responsibility for the broadcast through a foreign channel, and because the foreign channels are not before us and we have no jurisdiction over them, I think we are justified to consider MultiChoice as the broadcaster and not to consider who the channel was in a particular case. Although we acknowledge that each case should be considered on its own merits, the fact is that MultiChoice is the broadcaster before us as respondent in this complaint.

Taking all these factors into consideration, we consider a fine of R 10 000 to be the appropriate sanction. The fine should be paid to the Registrar on or before 15th May 2012.

*Prof Henning Viljoen*

*The Chairperson Van Rooyen SC and Commissioners Makaula, Makeketa and Singh concurred in the above sanction.*