



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 NUMBER: 02/2014

DATE OF HEARING: 20 FEBRUARY 2014
JUDGMENT RELEASE DATE: 04 MARCH 2014

FORBES

COMPLAINANT

vs

SABC3

RESPONDENT

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
 MR A MELVILLE
 MR BRIAN MAKEKETA
 MS ZALI MBOMBO
 ADV BOITUMELO MMUSINYANE

THE COMPLAINANT: The Complainant was invited but was unable to attend.

RESPONDENT: Mr Fakir Hassen, Manager: Broadcasting Compliance, Regulatory Affairs accompanied by Timothy Magampa, Acting Compliance Officer, Broadcasting Compliance, Legal and Regulatory Affairs and Ms Maritha Greenland: Commissioning Editor of the SABC.

Competition – rules did not initially disclose that only clients of a certain bank were permitted to take part – serious contravention – fine imposed. Forbes vs SABC3, Case: 02/2014(BCCSA)

SUMMARY

A complaint was received regarding a viewer competition that offered a prize to viewers who sent an SMS to a certain number. Later on during the programme, it emerged, however, that only clients of a certain bank, i.e. Nedbank, stood a chance of winning the

prize. The Complainant is not a client of Nedbank. The SABC conceded that it had made an error.

***Held:* Although there was no reason to doubt the integrity of the SABC in this matter, an error had been made in not informing the viewers beforehand of the competition conditions.**

The contravention was a serious one. Accordingly, a fine was regarded as appropriate in the circumstances. However, since the contravention was not intentional, and this was the first time that the SABC was held to have transgressed this provision of the BCCSA Code, a fine of R10 000 was imposed.

JUDGMENT

JCW van Rooyen SC

[1] A complaint was received regarding a viewer competition that offered a prize to viewers who sent an SMS to a certain number. Later on during the programme, however, it emerged that only clients of Nedbank stood a chance of winning the prize. The Complainant is not a client of Nedbank.

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

“No the 28-11-2013 The Expresso TV show aired on SABC3 hosted a competition from around about 06h15 asking the viewers to SMS Mandela your full name and Nedbank to 33728. The prize is a trip to London. I sms'ed multiple times from 2 mobile phones. At no time until around about 08h10 did they state that the competition was only open to Nedbank clients. I think this is very dishonest and can only wonder how many thousands of South Africans entered this competition.”

[3] **The Broadcaster responded as follows:**

1. “The normal practice with viewer competitions is to inform audiences what the terms and conditions are. Since promos for these competitions are recorded in advance, this requirement is always adhered to. We normally also run “straplines” that state the most pertinent info on screen.
2. Unfortunately, this competition was in a different format in the style of advertorial that is discussed in the live studio situation. The live situation therefore brought about some challenges to the conventional approach.
3. While we informed viewers that “terms and conditions did apply”, we realised afterwards that we had not given a reference to the details of these terms and conditions. We therefore corrected the information when we next discussed the competition, but as the complainant correctly points out; this was unfortunately later in the same show.
4. We accept that our delayed response caused the viewer to spend funds unnecessarily through SMS's which he sent. We apologise for this error and undertake to reimburse the complainant with the expenses that he would have incurred in this regard.”

[4] **The Complainant replied as follows:**

“To be quite honest I did not write to you because I wanted my money back, I'm sure thousand entered the competition that were Not Nedbank clients and for that reason some one made thousands of Rands. I think whoever was responsible should be fined. Too many people are ripped off every day, and these empty apologies do not mean much.”

EVALUATION

[5] Before 2011, the Broadcasting Code did not include a provision concerning competitions. However, as a result of submissions at ICASA, the new Code included rules in this regard. The BCCSA, after consultation with the National Association of Broadcasters, accepted the Code that ICASA published in 2009. The National Association of Broadcasters as well as a few broadcasters had indeed attended the public hearings in 2008, where they had the opportunity of addressing the relevant ICASA Committee regarding the proposed new Code.

[6] **Clause 16 of the Broadcasting Code provides as follows:**

16. Competitions and Audience Participation

(1) Where audiences are invited on air to react to a programme or competition broadcasting service licensees must make known the full cost of a telephone call or a SMS.

(2) Broadcasting service licensees must specify the proportion of the cost of the call or SMS, as the case may be, which is intended for any specified charitable cause.

(3) Broadcasting service licensees must ensure that audiences who are invited to compete in any competition are made aware on air of *the rules of the competition*. *Such rules must include the closing date and the manner in which the winner is to be determined.* (emphasis added)

[7] It is, of course, sub-clause (3) which is applicable to this matter. There is no reason to doubt the integrity of the SABC in this matter. An error was, however, made in not informing viewers beforehand of the competition conditions. And, although the word Nedbank is included in the SMS, a viewer might very well have assumed – and reasonably so – that Nedbank would award the prize to any person who chose to take part in the competition.

[8] We agree with the Complainant that a fine would be appropriate, and have decided that, since the contravention was not intentional and this is the first time that the SABC has been found to have contravened this clause of the Code, a high fine, which might even amount to R60 000, would not be appropriate. Nevertheless, it is a serious contravention and we believe that a fine of R10 000 would be fitting for such a first contravention.

In the result the complaint is upheld and a fine of R10 000, payable to the BCCSA at the Office of the Registrar on or before 30 March 2014, is imposed.



**JCW VAN ROOYEN SC
CHAIRPERSON**

Commissioners Makeketa, Melville, Mbombo and Mmusinyane concurred with the judgment of the Chairperson.