PROGRAMME CONTAINING A VISUAL THAT COULD AMOUNT TO EXTREME VIOLENCE – BROADCASTER HAVING TAKEN THE NECESSARY PRECAUTIONS - NO CONTRAVENTION OF THE CODE - CILLIERS VS MULTICHOICE CHANNEL 122, CASE NO: 39/2013 (BCCSA)

SUMMARY

A complaint was lodged in connection with a video that was aired on a television programme. The Complainant regarded the video as being harmful in that a young man was injured after a vehicle was driven into him.

The Tribunal viewed the video. There was no clear indication that the driving of a vehicle into an individual could be equated with extreme violence. On the contrary, the act could well be described as a ‘stunt’ which the affected parties were fully aware of. In any event, the programme served as an assembly of videos which had...
already gone viral. The programme was accompanied by an age restriction. No contravention of the Code was found.

JUDGMENT

ADV R SEWLAL

[1] The Registrar received a complaint concerning a programme broadcast on the Comedy Channel on DSTV.

[2] The complaint was formulated as follows:

“I would like to lay a complaint about an offensive and disturbing add (sic) on comedy central. The program is called Tosh. O. I would appreciate it if you could look into it thank you so much for your immediate response. Sorry for not giving enough information. The program is on channel 122 on DSTV, it is called Tosh.O. It is on every week night around 8 o'clock, but they have adds about the program in between other program, in the add there is a young man dressed in a super hero outfit being ran over by a pick up truck, after he is run over you can see that has been terribly injured, which is not something that you should broadcast on a tv add, I was terribly upset after seeing the add. I would really appreciate it if you could look into it. I was working late last night but i was able to catch one of the times the add was featuring. It was exactly 22:25 and the date was 19 June 2013.they also advertise that it is on every weekday between 19:40 and 20:55. Comedy central is one of my favorite channels, that specific add is the only thing that i find to be offensive and disturbing. Thank you so much for all your help.”

[3] The Respondent’s argument included the following:

“The complainant has not stated which clause of the Code allegedly contravened by the broadcast. We are however of the view that clauses 9.5 and 12 of the Code are relevant.

Tosh.O is an American television series hosted by comedian Daniel Tosh, who provides commentary on online video clips, society, celebrities, and other parts of popular Culture and stereotypes (the "Programme").

The Programme focuses on Internet viral videos and is aimed at 18-34year-old males.

Each episode begins with a clip from an online video. Tosh makes humorous comments and jokes about the video, and proceeds to do so for a selection of other videos and/or pictures.

The Programme is classified with 16 age restriction and has warnings for language (L) and nudity (N).

The promo referred to in the complaint contained a scene from a viral video that forms part of that week's episode of Tosh.O. In that video, a young man is seen
attempting to test his ‘super hero’ strength by allowing someone to drive into him in a pick-up truck that has a mattress attached to the front end.

The truck does drive into and hits him, he falls down and is later shown lying and clearly feeling the pain.

As indicated above, we are of the view that the relevant clause are clause 9 and 12.

**Clause 9 provides as follows:**

"**Child pomography, bestiality, incest, tape, sexual conduct and violence**

9. A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context, contains a scene or scenes, simulated or real, of any of the following-

9.1 child pomography;

9.2 bestiality, incest or rape;

9.3 explicit violent sexual conduct;

9.4 explicit sexual conduct which violates the right to human dignity of any person or which degrades a person and which constitutes incitement to cause harm; or

9.5 the explicit infliction of or explicit effects of extreme violence which constitutes incitement to cause harm. (Our emphasis)

We submit that the video in question does not contravene clause 9.5 in that there is nothing in the video which amounts to extreme violence which constitutes incitement to cause harm.

With respect to clause 12 which deals with watershed period, we submit that the promo was broadcast at 22h25 long after the watershed period had commenced.

We submit therefore that the promo did not contravene clause 12 of the Code in any way.

In conclusion, we submit that the comments did not contravene the Code.”

**EVALUATION**

[4] As indicated by the Respondent, Clause 9.5 is applicable. Upon watching the video, it is clear that the driver of the pick-up truck was invited to drive into the ‘super hero’. There needs to be extreme violence and it must constitute
incitement to cause harm in order for one to be in breach of the said clause. It is difficult to regard the act as amounting to extreme violence especially since a mattress was affixed to the front of the vehicle before it was driven into the man. The act easily fits the description of a stunt. It was pre-arranged, and the man knew what to expect. Further, it is true that the invitation extended by him to exhibit his prowess removes the element of incitement to cause harm.

[5] With regard to the time when the programme was aired, it falls within the watershed period as contained in Clause 12. Arising from the complaint, it must be said that the precise timing of the programme was not an issue. It was more a case of the Complainant providing the time for purposes of proper identification. [Its] It is only the Respondent which sought to introduce the clause relating to the watershed period.

[6] The snippets of video shown on Tosh O are not generated by the producers themselves. The programme comprises videos handpicked by the producers and which are already in the public domain as they have gone viral. Tosh O flights this collection of videos and commentary on them by the show’s host who happens to be a comedian.

[7] The fact that Tosh O is a classified programme cannot be ignored. It carries a 16 age restriction (and includes warnings for language (L) and nudity (N)).

In the result no contravention of the Code of Conduct could be found and the complaint is accordingly dismissed.

ADV R SEWLAL
COMMISSIONER

The Deputy Chairperson Viljoen and Commissioner Makaula-Ntsebeza concurred in the above judgment.