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CASE NUMBER: 25/2006

DATE OF HEARING: 30 JUNE 2006

D SHEASBY

COMPLAINANT

vs

567 CAPE TALK

RESPONDENT

**TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Dr Lynda Gilfillan
Ms Zenobia Africa
Adv I van der Merwe**

The Complainants in person

For the Respondent: Ms Khahliso Mochaba, Group Regulatory Affairs Manager

Dangerous substance referred to as effective remover of stains on glassware – no warning as to extremely dangerous nature of substance – hydrofluoric acid – Broadcaster should have warned. D Sheasby vs 567 Cape Talk, Case No: 25/2006

SUMMARY

Mr Sheasby lodged a complaint with the Registrar in regard to what he described as dangerous advice given by a presenter on Cape Talk. The Tribunal was firstly of the

view that given the time of the broadcast on a Saturday afternoon, a large number of children was likely to have been part of the audience. The advice given on the use of hydrofluoric acid for the removal of stain from glassware should have been accompanied by a warning as to the extreme danger of the use of this acid.

The next question was whether there was not, in any case, a duty to have warned even adult listeners. The Tribunal was of the view that the dangers of the use of hydrofluoric acid are so important that they qualify as a matter of “public importance” in terms of clause 35 of the Broadcasting Code. This is no ordinary common danger of which reasonable persons would be aware. Even if it is generally expected of consumers and listeners that they will read the inscriptions on a container, the present case is a special one where a warning is required.

The Tribunal was, accordingly, of the view that clauses 18.1 and 35 of the Code had been contravened. Cape Talk was directed to broadcast, with reference to the programme in which the hydrofluoric acid was first mentioned, that the use of hydrofluoric acid is extremely dangerous, that the directions on the container should be read before use, and that such a container should be kept in a place where it would be outside the reach of small children. This broadcast should take place in the same programme on or before 14 August 2006, and the draft of the text of the correction must be sent to the Registrar for approval before broadcast. The broadcast must mention that the BCCSA ordered this correction.

JUDGMENT

JCW VAN ROOYEN SC (CHAIRPERSON)

[1] Mr Sheasby lodged a complaint with the Registrar in regard to what he described as dangerous advice given by a presenter on Cape Talk. I decided to include the complaint in the list of matters which a Tribunal would hear in Cape Town.

[2] The Complaint reads as follows:

“Dangerous suggestions given in DIY program and subsequent refusal to issue warnings in respect of such suggestions.

On Saturday 21 January 2006, on the Saturday afternoon Cape Talk 567, Prim Reddy DIY show, the guest ‘expert’, ‘The Screwman’ gave a tip on removal of stains from glassware, namely, the use of OXALIC ACID, which is available from hardware stores as a powder or granules, to be mixed with water, prior to use. I didn’t particularly worry about this, as acid isn’t dramatically dangerous.

However, on the same program the following weekend, 28 January, Reuben added another chemical for use in cleaning stains from glassware – HYDROFLUORIC ACID! This is a highly corrosive, dangerous acid. It is used to etch glass, so logically you will understand it cannot be kept in glass containers. Before the advent of plastics, in its liquid state, it could only be stored in lead-lined containers or earthenware vessels. A splash of this acid on the skin, quickly burns deep into the flesh and the usual remedies of bicarbonate of soda and other alkalis have very little effect in neutralizing the acid. It may require the direct injection of calcium into the affected area to halt the burning action.

Now, I became alarmed and phoned the station to voice warnings about the acids mentioned. The call-screener listened to my concerns and *agreed* that I should go on air and issue the warnings. Eventually though, he came back on the line to me and said that the *producer* did not want me to go on air with this information. He, the call-screener, disagreed with that attitude, (full marks to him), but said he could do nothing further.

On Monday 30 January I spoke to the Program Manager, Mr Colin Cullis, who initially understood me to be talking about Hydrochloric Acid, which we all have in our stomachs and is also used for pool cleaning and therefore hardly very dangerous. I had to spell out for him that I was talking about Hydrofluoric Acid, and described to him its dangers. He is of the opinion that anyone obtaining the acid would be aware of its dangers and take suitable precautions. I emphasized that my concerns was for children inadvertently coming across and opening a bottle containing this acid. He still disagreed with a warning being issued on Cape Talk. I told him that I considered this attitude irresponsible, as the information being broadcast as household cleaning tips was dangerous if no concomitant warnings were issued. He reiterated his viewpoint and we agreed to disagree.

I spoke today, shortly before 13:00, to Dr Pick of the Burns Unit at Tygerberg Hospital and asked whether I was being paranoid about the matter. She said absolutely not, and agrees that warnings should have been issued with the cleaning tips. I spoke also to Dr Cairncross at the Red Cross Children's Hospital Burns Unit who was of the same opinion. Both doctors were agreeable to their names being associated with the complaint."

[3] Shortened, Cape Talk responded as follows:

While Cape Talk appreciates that there may be instances when warnings have to be given on air, it is Cape Talk's respectful submission that in this particular instance, there was no contravention of any of the provisions of the BCCSA Code of Conduct ("the Code") for the reasons that follow below.

In as far as children are concerned; the relevant provisions of the Code are clauses 18, 26 and 27. Cape Talk submits that the broadcast in question has not contravened any of the provisions of the BCCSA Code.

In respect of the allegation that Mr Colin Cullis, Cape Talk's programme manager, disagreed with issuing warnings, Cape Talk wishes to put Mr Cullis's response in context. When the matter was brought to Mr Cullis' attention, the broadcast complained of had already been aired, and Mr Cullis's response was in that context, that the issue in question had already passed; not that he disagreed that there will be instances where caution would need to be issued to the listeners.

In addition, while warnings are important, it also has to be borne in mind that, when it comes to dangerous items such as extremely corrosive acids, it would legally be difficult for one to get his/her hands on them and that the law would require that their packaging also come with the necessary cautions. However, this should not be construed as Cape Talk's disagreement with the notion of issuing listeners with warnings where necessary. This is something that we take

seriously and in light thereof, we take the complainant's concerns seriously. However, in so far as the Code is concerned, we are of the strong view that the broadcast in question did not contravene any of the provisions of the Code."

- [4] Whilst the Tribunal agrees with Ms Mochaba, who put the case for Cape Talk, that clauses 26 and 27 of the Code are not applicable to this complaint, the Tribunal is of the view that a large number of children was likely to have been in the audience on a Saturday afternoon. It is likely that children between 11 and 16 would have listened to this kind of programme in the light of the interest which children of this age take in woodwork and related hobbies. The programme was, accordingly, unsuitable for children in that the presenter did not warn of the extremely dangerous effect which the hydrofluoric acid might have. The Tribunal agrees with Ms Mochaba that it cannot be expected of a broadcaster to constantly issue warnings. It is a question of degree. It was not disputed by Cape Talk that hydrofluoric acid is particularly dangerous. What was disputed is whether it had a duty to warn listeners. The approach put forward by Ms Mochaba is that if a warning is expected in this case, a wide range of warnings would have to be broadcast almost daily. The listeners must take responsibility when they use materials which are clearly marked as dangerous. The Tribunal agrees that it would be unreasonable to expect a broadcaster to consistently warn of every danger in the wide spectrum of dangers which confront the consumer from day to day. However, when it gives advice that an extremely dangerous substance needs to be used, it should issue a warning. The broadcaster should not merely introduce a subject, and then leave its possible dangers in the air. The Tribunal therefore agrees with Mr Sheasby that a warning should have been given during the programme that the particular acid referred to for the removal of stains is also highly dangerous. When requested to do so, Cape Talk should have issued the warning in the first programme thereafter.

- [5] Ms Mochaba debated the applicability of clause 35 of the Code to the broadcast. Clause 35 provides as follows:

- 35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.
- 35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

Ms Mochaba argued that the advice did not amount to “comment” since it did not amount to a reaction to a matter raised by someone else or, for example, a news event. In other words, the clause should only be applicable where, for example, there is a matter of public importance and the broadcaster comments on it. The middle-east war or the latest figures on HIV AIDS would, for example, qualify. However, the Tribunal does not agree with this limited interpretation of the word “comment”. It must, of course be borne in mind that the Tribunal has often cautioned that the clause should not be applied too widely, since such an interpretation of the clause would make the task of a broadcaster impossible and unreasonably limit freedom of speech. Therefore the matter commented on must be one of “public importance”. It has been held that “public importance” should be interpreted narrowly, in the sense that the matter commented on must be of “public importance” to South African listeners. World events would not generally qualify, unless it can be shown that the comment on them is directly relevant to and linked to South Africa.¹ Furthermore, contraventions of clause 35 should be limited to cases where it is *unequivocally clear* that either an honest expression of opinion *or* facts truly stated *or* facts fairly indicated and referred to, was absent.

- [6] The Tribunal is of the view that the dangers of the use of hydrofluoric acid are so significant that they qualify as a matter of public importance in terms of clause 35. This is no ordinary common danger of which reasonable persons would be

¹ *Dinur, Mankowitz and EMET SA v M-Net* (case no18/2002); *Shoot & Others v e-tv* (case no: 08/2003). Both these matter dealt with John Pilger documentaries on the Palestine issue.

aware. Even if it is generally expected of consumers and listeners that they will read the inscriptions on a container, the present case is a special case where a warning is required.

- [7] The Tribunal is, accordingly, of the view that clauses 18.1 and 35 of the Code have been contravened. Cape Talk is directed to broadcast, with reference to the programme in which the hydrofluoric acid was first mentioned, that the use of hydrofluoric acid is extremely dangerous, that the directions on the container should be read before use, and that such a container should be kept in a place where it would be outside the reach of children. This broadcast should take place on or before 14 August 2006, and the draft of the text of the correction must be sent to the Registrar for approval before broadcast. The correction must mention that Cape talk was instructed by the BCCSA to broadcast this correction.

In the result, the complaint is upheld and the broadcaster instructed to broadcast a correction as indicated.

JCW VAN ROOYEN SC
CHAIRPERSON

Ad Hoc Commissioners Gilfillan, Africa and van der Merwe concurred in the judgment of the Chairperson.