DATE OF TRIBUNAL: 19 JUNE 2002

FOUCHE, VAN NIEKERK, HAMMOND, SIMPSON AND OTHERS

COMPLAINANTS

V

M-Net

RESPONDENT

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
REV DSR DU TOIT
PROF HENNING VILJOEN

FOR THE RESPONDENT MS LAURA HOWIE, PROGRAMME EXECUTIVE, MOVIES AND WITH HER MS BONITA NUTTALL, PROGRAMME ACCEPTANCE PRODUCER FROM M-NET.

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Violence – send-up on reality TV – film must be judged as a whole – screened after subscription watershed at 20:00 – no contravention as to violence – M-Net, offering to remove blasphemous reference on “red” channel from further screenings. Matter settled as to this instance of language. Other instances not so serious that the green channel could not take care of them, as was done.

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SUMMARY

“The Contenders”, a satire on reality TV, where the “contenders” have to kill each other, found not to have been in contravention of the Broadcasting Code. The film must be judged as a whole. Parental control mechanism blocking out film for under eighteens and green channel blocking out all instances of crude and profane language. One instance in “red channel”, however, being found to be blasphemous
removed from further screenings. M-Net offering to do so and the matter, accordingly, settled. M-Net requested to ensure that subscribers are regularly informed on how the parental mechanism works and that there is a green channel which blocks out crude and profane language. Complaint dismissed as to violence and settled as to blasphemy.

JUDGMENT

JCW van Rooyen

[1] M-Net screened *The Contenders*, a satire on reality tv, at 20:00 on the 6th June 2002. The contest concerns a number of persons who were chosen by way of a draw to survive killing by the others. Each contender is issued with a pistol. Scenes of shooting follow. At times, crude and profane language is also used.

[2] The Registrar received numerous complaints. Two of these complaints, that of Mr Fouche and Ms Sandra van Niekerk, are quoted here:

**Mr Fouche:** "I hereby wish to announce my utter disgust and disappointment toward the broadcaster concerned. I felt that M-Net has shown a total disregard for Christian morals and values by broadcasting the above mentioned programme. Surely some sort of screening should be done before a show can be aired, if this is so, then I feel that whoever was responsible for allowing “The Contenders” to be aired (especially in the specific time slot) owed the entire Christian community a public apology. I watched approximately five minutes of the programme before I switched channels, but that was enough to make me sick. Once a copy of the programme is received please watch the scene in which a young boy is held hostage by a knife wheeling kidnapper. Shortly after this scene the kidnapper says to an interviewer or someone that “God should come down and F**k his mother” (talking about the young boy’s mother). There is more of this blasphemy, and that is only the five minutes or so that I watched. I dread to think of what the rest of the programme was like. In closing I wish to say that I also feel that M-Net should pay a hefty fine so as to ensure that programming of this nature and content never appears on our screens again. I trust that this complaint will be dealt with utmost concern, and would appreciate feedback regarding outcome of hearing."

**S van Niekerk:** “I hereby lodge a formal complaint that “The Contenders” be removed from Television with immediate effect. This programme is a reality show much like Big Brother. The only difference being that the “contenders” kill each other, in real life. They show this graphically on television with real people clubbing or shooting each other to death. Even concocting death poisons. This is cruel and very shocking. It shows utter disregard for human life whatsoever. How is a show like this even made legal? I feel extremely disturbed that this was even considered for South African television. This kind of insane madness should be banned in our country! They even showed a woman giving birth and the baby was breached… How can the cameraman keep filming and not help! (She was begging for help). We might as well stop trying to fight crime in this country if this is what we’re going to show on TV. This would be the same as starting a real live show raping woman and children or child pornography. Please assist me if I need to fill out any more forms to get this program REMOVED immediately!!"
It is clear from the complaints that some viewers misunderstood the film and thought that it was indeed reality TV.

M-Net responded as follows:

1. Series 7: THE CONTENDERS premièred on M-Net on 06/06/2002 at 20:00 on the M-Net Domestic Channel (Main Channel).
   - This complaint relates to a broadcast of the film on the M-Net main channel on the 06/06/2002 at 20:00 and
   - To the broadcasting of material that was offensive to several viewers.

2. At the stage that M-Net had acquired and scheduled the film, SERIES 7: THE CONTENDERS, at the Film and Publications Board had approved the distribution of the film in South Africa and prescribed an age restriction of "NO PERSONS UNDER EIGHTEEN (18) YEARS. A FILM WITH VIOLENCE AS INDICATED BY THE LETTERS ‘V’ (18V). A certificate with respect to this decision was issued on 03/05/2001, a copy of which is annexed hereto as Annexure “A”

3. Based on this certification and having viewed the film themselves, MNET decided to prescribe a restriction on this film as follows: (See Annexure “B”)

   ‘NO PERSONS UNDER EIGHTEEN (18): VIOLENCE AND STRONG LANGUAGE” (18VL)

4. M-NET thus deemed it prudent to consider the guidelines set by the Film and Publications Board. However, M-NET deemed it necessary to include a warning for strong language over and above the warning for violence, already imposed on the film.

5. In the broadcast of the film, the following warnings and consumer advice were printed and broadcast:
   - PRESENTER LINK: In the present link preceding the program there was a warning, quoted "**Please note that this film is not suitable for under 18’s.”** (See Annexure “C”)
   - TV MAGAZINE: Appropriate consumer advise and warnings were printed in the June 2002 TV Magazine, both on the movie synopsis page and the play date page. A copy of each is attached hereto as Annexure “D” and Annexure “E” respectively. These copies have been sourced from the June 2002 TV Magazine, the month that the broadcast of SERIES 7: THE CONTENDERS gave rise to the complaint.
   - ON-SCREEN SLIDE PRESENTATION: A graphic slide presentation was scheduled before the film started, reflecting the following: 18 in a large on-screen square with the icons “V” and “L” reflected beneath it. This presentation lasted for a duration of ten seconds.
   - VOICE OVER: The above slide presentation was further enhanced by a voice-over that was broadcast during the slide presentation and contained the following warning:
     
     ‘THIS MOVIE IS RATED 18 AND CONTAINDS SCENES OF VIOLENCE AND STRONG LANGUAGE. VIEWER DISCRETION IS ADVISED.’
   - ON SCREEN GRAPHIC: There was a small square with an “18” warning displayed in the top right hand corner of the screen for the first minute of the programme.
MOVIE WARNING: In addition to M-Net's warnings, the movie itself carried a warning at the start of the movie printed on the screen and voice over saying the following:

“DUE TO THE GRPAHIC NATURE OF THE FOLLOWING PROGRAM, VIEWER DESCRETION IS ADVISED”

6. The usual sanitation cuts to the sound track of the film were made, thereby “blanking out” any strong language. Any person who has set his/her decoder to the GREEN CHANNEL will have received a censored version of the soundtrack to this film. This means that all swear words and profanity should be blanked out.

7. Each decoder contains a parental control mechanism. Should parents wish to prevent their children from viewing films with high age restrictions, this mechanism can be enabled to block films that carry the selected age restrictions.

Accordingly, the Respondent will set out its defence by contextualising the film, as well as by providing the acclaimed evaluation of the film in question.

[5] In judging whether a broadcaster has contravened the Broadcasting Code by broadcasting a film, this Tribunal has held that to exclude any uncertainty as to what “indecent or obscene or offensive or harmful to public morals’ means in the Code, it would have regard to section 26(4) of the Films and Publications Act 1996 and, with it, Schedule 6 read with Schedules 9 and 11, as a guide to its application of the Code. See R de Villiers vs e-tv (case number 28/2002) on the documentary broadcast in 3rd Degree on “swinging”.

Schedule 6 of the said Act provides as follows:

A film shall be classified as XX if, judged within context, it contains a scene or scenes, simulated or real, of any of the following:
(1) child pornography;
(2) explicit violent sexual conduct;
(3) bestiality;
(4) explicit sexual conduct which degrades* a person and which constitutes incitement to cause harm; or
(5) the explicit infliction of extreme violence or the explicit effects of extreme violence which constitutes incitement to cause harm.

* “degrade” is defined in section 1 of the Act as meaning the advocacy of a particular form of hatred based on gender.
Schedule 8

Age Restriction for Films **

An age restriction may be imposed only if the classification committee or the Review Board is of the opinion that, judged within context, it is necessary to protect children in the relevant age group against harmful or disturbing material in the film.

**The Commission has, with the agreement of the tv Broadcasters in its jurisdiction, provided for certain rules as to watershed, classification and age restrictions in this regard.

Schedule 9

Art and Science Exemption for Films

The XX or X18 classification shall not be applicable to a bona fide scientific, documentary, dramatic or, except in the case of Schedule 6(1), an artistic film or any part of a film which, judged within context, is of such a nature.

Schedule 10

Promotion of Religious Hatred

(1) A publication or a film which, judged within context, advocates hatred that is based on religion, and that constitutes incitement to cause harm, shall be classified as XX.

(2) Clause (1) shall not apply to-
(a) a bona fide scientific, documentary, dramatic, artistic, literary or religious publication or film, or any part thereof which, judged within context, is of such nature;
(b) a publication or film, which amounts to a bona fide discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
(c) a publication or film, which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

Schedule 11

Sexual Conduct

For the purpose of these Schedules "sexual conduct" means genitals in a state of stimulation or arousal; the lewd display of genitals; masturbation; sexual intercourse, which includes anal sexual intercourse; the fondling, or touching with any object, of genitals; the penetration of a vagina or anus with any object; oral genital contact; or oral anal contact.

[6] When judging a film, it is important to judge it within its genre as a satire and also to judge it as a whole. Context is extremely important in this inquiry. If one were
to take the introductory killing of a person in a shop on its own, it is disgusting in
the extreme. However, judged within the film as a satire combined with “black
humour”, the action becomes unreal. We therefore do not regard the film as
amounting to violence in terms of Schedule 6(5) as quoted above. It is, in any
case, a bona fide drama in terms of Schedule 9.

[7] In one scene, one of the contenders says in regard to one of the other contenders:
“God should come down and fuck his mother”. Within the crudity of the film,
this language is probably quite fitting. However, Judaeo-Christian religious
beliefs place an extremely high premium on the dignity of God. This dignity has
been described as a “mysterium tremendum et fascinans” (see Rumpff CJ in
Publications Control Board v Gallo(Africa) Ltd 1975(3) SA 665(A) “that
constitutes the heart of Christianity.” It comes as a blatant shock when the
contender says this to the others and there is no contextual build-up for this
blatant, hate inspiring statement. We believe that the statement is not only
blasphemous but also amounts to hatred based on religion that constitutes
incitement to harm. Believers already endure much in the form of the taking in
vain of the Lord’s name in films. To add this contemptuous utterance to the text,
simply shocks beyond what would be tolerated by Judaeo-Christian believers.
The statement degrades God in the extreme.

M-Net has agreed to remove the words (which were in any case removed on the
green channel) from the further screenings and we, accordingly regard the matter
as settled. M-Net, depending on the certificate of the Film and Publication Board
and its own advisory committee, acted bona fide in this matter. And, one could
argue that within the context of the film the words are not blasphemous. Yet, we
believe that the words have gone beyond satire and amount to hate speech.

[8] Given the fact that the film was broadcast with an 18 restriction and after the
subscription watershed, which would mean that the film would be blocked out by
the parental mechanism of parents who have activated the mechanism and that the green channel would have rendered a cleansed dialogue, we do not believe that the screening of the film as a whole contravened the Code. We have, however, requested M-Net to, once again, take steps to ensure that its subscribers are informed of the green channel and the parental control mechanism.

The complaint is dismissed and a settlement was reached on the blasphemy.

JCW VAN ROOYEN SC
CHAIRPERSON
4 JULY 2002

The other Commissioners concurred in the above judgment