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CASE NUMBER: 22/2017

DATE OF HEARING: 27 SEPTEMBER 2017

JUDGMENT RELEASE DATE: 10 OCTOBER 2017

SHAW

COMPLAINANT

vs

SABC3

RESPONDENT

**TRIBUNAL: PROF SUNETTE LOTTER (DEPUTY CHAIRPERSON)
MS NOKUBONGA FAKUDE
MR EDWIN NAIDU**

FOR THE COMPLAINANTS: The complainant was unable to attend.

**FOR THE RESPONDENT: Mr Nyiko Shibambo, Acting Manager: Broadcasting
Broadcasting Compliance, Policy & Regulatory Affairs of the SABC.**

Harmful to children - Movie broadcast at 19:00 not in contravention of the Code. Shaw vs SABC3, Case No: 22/2017(BCCSA)

SUMMARY

Material broadcast before the watershed period, considered harmful to children. The complainant alleges that the movie Double Echo, was accompanied by scenes featuring sex and nudity, although it was not depicted in the warning sign.

JUDGMENT

E NAIDU

[1] The Registrar of the BCCSA received a complaint from Guy Shaw, a member of the public in Durban, KwaZulu Natal.

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

“I wish to place on the record my complaint as to what I feel was inappropriate content in the movie *Double Echo* screened on SABC 3 on Saturday 2nd September at 7pm (family viewing time).

This is a 2017 South African production which carried a 16 age restriction.

My main complaint relates to sex scenes not appropriate to being broadcast before 9pm. There were numerous scenes of a sexual nature and one in which a woman’s nipples can be seen.

In my opinion this is totally unsuitable to families who may be watching SABC 3 during that early hour of the evening.

I wish to place my complaint on the record and request that this matter please be investigated.

Thank you for your prompt reply. I do wish to pursue this complaint before the Commission otherwise nothing gets done about this type of irresponsible showing of content which is offensive to families and children.

My address is 2 Harrier Crescent, Umhlanga, Durban, KwaZulu Natal.

Subsequent to my writing the original e-mail to you there was another scene in the movie where breast nudity was shown at around 7:50pm. I noted that the SABC content warning shown on the top left corner of the screen after each advert break said 16VL. Nothing was said about nudity or sex. Your attention is appreciated.”

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

BCCSA COMPLAINT: GUY SHAW - SABC 3 - DOUBLE ECHO - 02.09.2017 - 19:00

In respect of the above-mentioned matter, please find our comments as follows:

1. *Double Echo* is a movie filled with tension, temptation, secrets and sleight of hand. It is based on a novel of the same title by Afrikaans writer, François Bloemhof.
2. The material contained a **16LV** advisory on screen.
3. We submit that the implied sexual acts as well as the nudity as per the complainant were completely justified and appropriately limited.
4. The movie was broadcast on Saturday evening when most of the parents are at home to can take that responsibility of determining its suitability for viewing.

We submit that there was no contravention of the Code.”

EVALUATION

[4] **Applicable Clauses of the Code:**

Clause 7 - Watershed Period

- (1) Programming on television which contains scenes of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences must not be broadcast before the watershed period.
 - (3) Some programmes broadcast outside the watershed period may not be suitable for very young children. Licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing choices.
- [5] Double Echo was broadcast on SABC3 on 2 September 2017. It carried a 16 LV age restriction and was screened at 19:00, traditionally regarded as family viewing time. The watershed period for free-to-air television broadcasting service licensees starts at 21:00 and is aimed at protecting children from harmful television content.
- [6] To ensure that audiences are able to choose programmes from an informed perspective, broadcasters must provide adequate advisory assistance, and details of the related content. In terms of Clause 7(3) Licensees must provide “sufficient information in terms of regular scheduling or audience advisories”, to assist parents to make appropriate viewing choices. Programmes containing scenes or images of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences may not be broadcast before the watershed.
- [7] To this end, the definition of explicit in the English Oxford Dictionary, is: “stated clearly and in detail, leaving no room for confusion or doubt.” While implied, the scenes of a sexual nature, in Double Echo veer on the erotic and includes a fleeting glimpse of a nipple but it cannot be deemed explicit in the context of this movie. The scenes of a sexual nature in Double Echo, are non-explicit but suggestive.

- [8] While there is little doubt that there were brief scenes in Double Echo depicting sexual conduct, these scenes are not explicit. The fleeting image of a breast does not warrant an advisory on sexual content as the 16 age restriction should already have prevented the presence of young children in the audience. The nature of the sex scenes do not necessitate a special warning for viewers of sixteen years and older.
- [9] The sexual conduct is not of an explicit nature, and it was therefore not necessary to provide an advisory in respect of sex or nudity. The movie was broadcast on a Saturday evening and it is therefore assumed that most parents are at home to assume responsibility for determining its suitability for viewing, the dominant themes of language, violence and a lesser extent, the non-explicit sex. Viewed on their own, the sex scenes would have justified a 13S advisory. In the present circumstances the scenes are included in a film with a 16 age restriction. An advisory warning against sex and nudity should only have been added if these scenes had contained explicit sexual content that should not be viewed by anyone under the age of 16.
- [10] The SABC indicated that the rating provided by the Films and Publications Board was used, namely 16VL and that the suggestive sex scenes were not flagged because they were not explicit. It is necessary to comment on the fact that a movie with a 16VL age restriction was screened two hours before the watershed period. Although the SABC representative pointed out that the SABC3 audience was mature and able to consume risqué material, Clause 7(4) of the Code provides as follows:

“Television broadcasting service licencees, may, with the advance of the watershed period, progressively broadcast more adult material”.

It is the view of the panel that broadcasters should reflect carefully before showing adult material that requires a 16 age restriction, irrespective whether the advisory is V, L, S or N at 19:00, two hours before the watershed. Broadcasters should keep the sliding scale principle set out in Clause 7(4) in mind when screening programmes with subtle themes of sex, and indeed violence or strong language, before the watershed period – even if all the advisories are in place.

[11] In conclusion it is found that SABC3 did not infringe the Code for the reasons set out above. The complaint is dismissed.

E NAIDU
BCCSA COMMISSIONER

Deputy Chairperson Lotter and Commissioner Fakude concurred in the above judgment.