



Advertising Standards Authority of South Africa

(A Corporation Incorporated under Section 21)

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Willowview Burnside Island Office Park (entrance off Athole) 410 Jan Smuts Avenue Craighall Park PO Box 41555 Craighall 2024
Company Registration Number 1995/00764/08 Non-profit Registration Number 043 694 NPO

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To: Bongani Gosa
BWD Advertising **Email:** bongani@bwdadvertising.co.za

From: Ms Bongiwe Tyutu

Date: 23 March 2017

Reference: BWD ADVERTISING / E BUNCHAN / 2017-5318F

Dear Bongani Gosa

We refer to the above matter and enclose herewith a copy of the ASA Directorate ruling.

Yours sincerely

THE ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA


BONGIWE TYUTU
CONSULTANT: DISPUTE RESOLUTION
GN

Encl. ASA Directorate Ruling (4 pages)



The Advertising Standards Authority of South Africa

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RULING OF THE ASA DIRECTORATE

In the matter between:

MRS EMILY BUCHAN

COMPLAINANT

and

BWD ADVERTISING (PTY) LTD

RESPONDENT

23 March 2017

BWD ADVERTISING / E BUCHAN / 2017-5318F

Mrs Buchan lodged a consumer complaint against the billboard of BWD Advertising situated at the Marlboro Drive off-ramp.

The billboard shows an image of a cup of black coffee and the text states the following:

“100% BLACK OWNED ADVERTISING AGENCY

SOME THINGS ARE BETTER AT 100%”

It provides the company's website URL and logo at the bottom.

COMPLAINT

In essence the complainant argued that the advertising was racist and discriminatory as it creates divisions in society. She also submitted that the advertisement could be interpreted to suggest that a company that is entirely black owned is better than a mixed or white owned company, which is racist.

RELEVANT CLAUSE OF THE CODE OF ADVERTISING PRACTICE

In light of the complaint Clause 3.4 of the Section II (Discrimination) was considered relevant.

RESPONSE

It was submitted that the billboard was not intended to promote racism or exclusion of other races. It explained that the advertising industry has a mandate to transform and empower, and this billboard was intended to celebrate and to highlight the existence and achievement of a 100% black-owned agency within this industry. To date, very few companies within the creative industry can lay claim to this accolade. It is important to communicate its BBEE status to prospective clients, which is what the billboard does.

Alluding to the fact that one's company is 100% black owned is not a racist statement, and is not discriminatory or offensive rhetoric, and it was certainly not its intention to denigrate any particular race.

ASA DIRECTORATE RULING

The ASA Directorate considered all the relevant documentation submitted by the respective parties.

Clause 3.4 of Section II states that no advertisements shall contain content of any description that is discriminatory, unless, in the opinion of the ASA, such discrimination is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The definition from Clause 4.17 of Section I states, *inter alia*, that "discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly imposes burdens, obligations or disadvantages on, or withholds benefits, opportunities or advantages from any person on one or more of certain listed grounds. These grounds include, *inter alia*, race, gender, sexual orientation, religion and several other analogous grounds.

The most prominent wording on the advertising is "**100% BLACK OWNED ADVERTISING AGENCY**", which is followed by the smaller printed wording "SOME THINGS ARE BETTER AT 100%", and a cup of black coffee used as a metaphor.

The complaint interprets this to suggest that a company that is entirely black owned is better than a mixed or white owned company, which she feels is racist. The respondent explained, however, that the advertisement is aimed at celebrating its 100% black

owned and black-managed BBBEE status, which it submitted is somewhat rare in the industry as a whole.

In Nedbank Eyethu / AE Ball / 2979 (14 October 2005), the Directorate dismissed a complaint against Nedbank's Eyethu Ownership Plan" which offered shares to black investors. The Directorate ruled that:

"Transformation processes, such as BEE opportunities, are the result of government policy and prescriptions and are aimed at improving the overall wealth and prosperity of those sectors of the community that did not previously have the means to create their own prosperity. The respondent is required to implement such policies. The advertisement clearly states 'black economic empowerment' and repeatedly uses the phrase 'BEE'. The hypothetical reasonable person therefore realise that the advertisement must be read in this context. While it is true that the offer withholds a benefit from white people, the respondent is *ex facie* acting responsibly and justifiably in terms of government policy."

Similarly, when considering an SAFM billboard poking fun at the notion of BEE fronting (see SAFM / OGL Kennedy / 11369 (21 August 2008) for more information), the Directorate noted that "BEE is a growth strategy which is gazetted and most businesses are required to apply these strategies should they wish to do business with government enterprises". The Directorate noted that the advertisement highlighted the issue in a tongue-in-cheek manner, and clearly invited conversation.

While the respondent's billboard is not commenting on the matter to invite conversation, it is broadcasting an achievement of which the respondent is particularly proud.

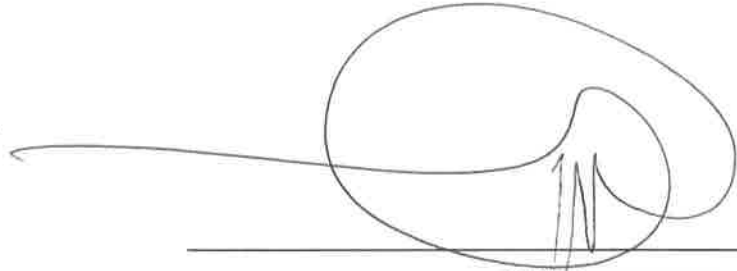
The Directorate accepts that the respondent claims that this accolade makes it "... BETTER ..." but does not agree that this is intended to, or likely to be interpreted as a derogatory or discriminatory statement. The reference to being better is clearly the respondent's opinion, and a hypothetical reasonable person would likely interpret it in this manner.

At worst, the respondent is advertising an accolade that only a few other agencies could lay claim to, which might be interpreted as justification for the reference to being "... BETTER ..."

However, the advertising does not impose any burden on any person, and does not withhold any benefit from any particular race. It is merely the respondent's subjective view on how its BBBEE status gives it an "edge" in the advertising industry.

The billboard can therefore not be said to be in contravention of Clause 3.4 of Section II of the Code.

The complaint is dismissed.

A handwritten signature in black ink, consisting of a large, loopy initial 'M' followed by a vertical stroke and a horizontal line, all enclosed within a large, irregular oval shape.

ON BEHALF OF THE ASA DIRECTORATE