Advertising Standards Authority of South Africa

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To: Dr Luke Havemann
Director
Havemann Inc.

Email: lhavemann@havemanninc.com

From: Ms Puseletso Matene

Date: 6 July 2011

Reference: **SHELL / TKAG & ANOTHER / 17882**

Dear Dr Havemann

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

PUSELETSO MATENE
CONSULTANT: DISPUTE RESOLUTIONS
FN

Encl. ASA Directorate ruling (17 pages)

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(Non-profit Company)

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Company Registration Number 1995/007814/08 Non-profit Registration Number 042-674-NPO

RULING OF THE ASA DIRECTORATE

In the matter between:

TREASURE THE KAROO ACTION GROUP	**FIRST COMPLAINANT**
MR NICHOLAS HOWARD YELL	**SECOND COMPLAINANT**
and	
SHELL SOUTH AFRICA (PTY) LTD	**RESPONDENT**

6 July 2011

SHELL / T KAG & ANOTHER / 17882

Havemann Inc Attorneys, on behalf of Treasure the Karoo Action Group, and Mr Yell lodged consumer complaints against a Shell website advertisement.

The advertisement is headed "DIALOGUE ON THE KAROO", with sub headings, "History of Hydraulic Fracturing, "Groundwater Protection" and ""Disclosure / Transparency". These subheadings are then followed with questions and answers relating to each subheading, detailing information, uses for hydraulic fracturing, the benefits to the process, risks (or lack thereof) for groundwater contamination, as well information about the additives to be used. The advertising also includes a diagram of a three kilometre tunnel that shows how the well would be prepared and how deep the drilling would go.

COMPLAINTS

In essence the complainants believe that the advertising is dishonest and misleading on many accounts and in the manner in which the information is presented. They are of the view that the advertising is prepared in a manner that plays down the environmental damage that hydraulic fracturing stands to cause to the Karoo and uses

unsubstantiated claims which also contradicts information that has been given at various meetings held in the communities by the respondent.

Individual points of the complaint will be dealt with more specifically in the ruling.

RELEVANT CLAUSES OF THE CODE OF ADVERTISING PRACTICE

In light of the complaints, and based on the clauses identified by the first complainant, the following clauses were taken into consideration:

- Section II, Clause 4.1 – Substantiation
- Section II, Clause 4.2.1 – Misleading claims
- Section II, Clause 4.2.2 – Puffery
- Section II, Clause 2 – Honesty
- Appendix J – Advertising containing environmental claims
- Section V, Clause 2.1 – Identification of editorial style print advertisement

RESPONSE

The respondent made substantial submissions including a report on all the meetings that were held regarding the Fracturing exploration, a list of comments from United States of America's state regulators relating to shale gas and hydraulic fracturing, a South Western Karoo Basin Gas Exploration Application for submission to the Petroleum Agency of South Africa, and a US Department of Energy report on Shale Gas Development in the United States.

According to the respondent, the submissions show, *inter alia*, that hydraulic fracturing has been used extensively in the US and has become a trusted energy source. It argues that the complainant has a view of the advertising that is opposite, and unnecessarily argumentative. As is evident from the intention of the advertising, Shell has every intention of being open about the additives that will be used and, when view from a reasonable perspective, the advertising is not misleading or dishonest. Where relevant, the Directorate will deal with specific aspects of the response in the ruling.

ASA DIRECTORATE RULING

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

For the sake of convenience, the Directorate is dealing with each claim separately. However, in some instances, the contention relates to an entire section of the advertisement rather than simply a claim. In such cases, the Directorate will consider the entire section and rule based on the objection.

1) "As part of our continuing effort to build a public dialogue regarding potential exploration activities in the Karoo, Shell wants to provide additional information related to the questions raised during recent public meetings and other conversations".

The first complainant is of the view that the statement is misleading as Shell has a statutory-imposed obligation to conduct public participation meetings. The use of the word "continuing" implies that Shell has, for some time, been involved in building a broader public dialogue regarding its exploration activities, and is likely to mislead consumers to believe that Shell has done more than just fulfil it statutory obligations.

Clause 4.2.1 of Section II states that advertisements should not contain any statements or visual presentation which, directly or by implication, omission, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.

The respondent submitted that the complainant is speculative, argumentative and endeavours to create an issue where, based on the complainant's own version, one simply does not exist. The letter of complaint concedes that Shell has engaged the public prior to the advertising being published. Whether the public participation is part of a statutory requirement or not, does not change the fact that Shell undertook to continue engaging with the public in an informative and transparent manner.

The Directorate needs to determine whether the statement is structured in such a manner as to mislead the consumer regarding the intentions of this communication.

The word "continuing" suggests progressing or regular. The advertiser has submitted documentation to show all the meetings and communications that they have had regarding the hydraulic fracturing exploration, and by the complainant's own admission, public meetings have been held by Shell to discuss the hydraulic fracturing exploration

in the Karoo. The advertising also indicates that the advertising itself is one of a series. It is clear from this that there is in fact "continuing" dialogue on the matter of hydraulic fracturing.

When looking at the statement as a whole, the general take out is that this specific advertisement is in addition to the information that was given and discussed in the meetings. This can be seen from the conclusion of the statement, "Shell wants to provide additional information related during recent public meetings and other conversations". It is, to a large extent, immaterial whether Shell initiated the process of ongoing discussions, or whether the state imposed an obligation on it to do so. The statement simply relays that this specific communication is meant to supplement previously conveyed information and public dialogues, as well as the fact that this is the first of a series. This cannot be regarded as misleading or devious, as the first complainant seems to suggest.

In light of the above the Directorate does not find this statement in contravention of Clause 4.2.1 of Section II (Misleading claims). This aspect of the complaint is dismissed.

2) Q. Shell says hydraulic fracturing has been around for 60 years. Why haven't people heard of it?

   A. shale gas is natural gas held in rock pores that are up to 20,000 times narrower than a human hair. Often the gas will not flow freely into a well, or will flow at a much slower rate than in normal gas reservoirs.

   The first use of hydraulic fracturing to stimulate the flow of natural gas occurred in 1947 in the Hugoton field of Kansas, USA. But deep shale gas formations didn't become commercially recoverable until the recent coupling of two technologies – hydraulic fracturing and horizontal drilling. This marriage of technologies has led to dramatic increases in the availability of natural gas from deep shale formations, as well as increased awareness of the benefits of shale gas. Today, hydraulic fracturing is used at nearly nine out of every 10 natural gas wells.

The first part of the complaint on this section was that the statement that the combination of the two technologies has led to "increased awareness of the benefits of shale gas" is misleading and unsubstantiated as there was no indication of what the

said benefits are. The complainant point out that there are however, environmental and health risks associated with fracturing, which has led a several countries placing bans and moratoria on the process. The complainant also found the advertising false in terms of Clause 1.2.3 of Appendix J of the Code which states that, all environmental claims and statements made in advertising should provide accurate information, meaningful to the consumer and based on recognised scientific standards and principles.

The question before the Directorate is whether the respondent can give evidence that the "marriage of the two technologies" has "increased awareness of the benefits of shale gas.

The respondent submitted extracts from various sources dealing with "THE FACTS ABOUT SHALE GAS", as well as a report on modern shale gas development in the Unites States that was prepared by the Ground Water Protection Council of Oklahoma City for the US Department of Energy. The report states, *inter alia*, "Three factors have come together in recent years to make shale gas production economically viable: 1) advances in horizontal drilling, 2) advances in hydraulic fracturing, and, perhaps most importantly, 3) rapid increases in natural gas prices." The report goes on to discuss how improvements on horizontal drilling and hydraulic fracturing technologies have opened the door to the economic recovery of shale gas. In addition, it deals with and comments on the environmental benefits, economic benefits and practical benefits of shale gas recovery and the unique method of drilling.

The report itself appears to qualify the statement in the advertising. However, the source of the report is the Ground Protection Council of Oklahoma City and prepared for the UN Department of energy, under the state and federal requirements of the US, and in the context of the specific processes and wells in the US.

The requirements of the Code as per Clause 4.1 of Section II (Substantiation) are that an independent, credible expert in the field verifies that the documentation submitted can unequivocally qualify the claims being made.

The problem that the Directorate is faced with in this instance is that this is clearly a contentious and highly technical issue, with ample "evidence" available from both sides of the debate, either for or against this practice. Given that the Directorate and the ASA are clearly not experts in this arena, Clause 4.1 of Section II requires an informed, concise and independent opinion from an expert who unequivocally confirms the relevant claim. While the report and extracts submitted may arguably support the

respondent's contention, the Directorate cannot, without expert verification, simply extrapolate the relevant information and findings to apply them to the respondent's proposed project and claims. Doing so could result in an incorrect, and flawed ruling based on uninformed opinions of a body (the ASA) that does not have the scientific know-how to pronounce on the issue.

It is for this reason that the Code requires unequivocal, independent verification from an expert in the relevant field to verify the veracity of the respondent's claims in relation to the respondent's service or product.

The documentation submitted does not go so far, and therefore cannot be accepted.

Given the above, the claim that "This marriage of technologies has led to ... increased awareness of the benefits of shale gas" is not adequately substantiated and in contravention of Clause 4.1 of Section II (Substantiation).

Based on the above, the respondent is required to:

- Withdraw the relevant claim;
- Action the withdrawal of the claim with immediate effect upon receipt of this ruling;
- Ensure that the claim is withdrawn within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
- Not use the claim in the current format again in the future.

This aspect of the complaint is upheld, and it is therefore not necessary for the Directorate to consider the other clauses identified as relevant at this time.

3) <u>"Today, Hydraulic fracturing is used at nearly nine out of every 10 natural gas wells".</u>

Here too, the first complainant requested substantiation for the claim, and argued that it is phrased in a misleading manner so as to imply that 90% of all natural gas produced in the world today originates from hydraulic fracturing, which is not the case, especially

considering the moratoriums placed on this practice in many countries, including South Africa.

The respondent relied on various articles and reports which confirm that the process of hydraulic fracturing is used in 9 out of every 10 natural gas wells in the United States.

This is problematic in that the advertisement does not qualify the claim to only apply to the United States. Even when considering the claim in its entirety, including the preceding information about the technology used and the origins of this practice, the average reader would still likely interpret the claim to relate to all natural gas wells across the globe. There is nothing before the Directorate to show that this is the case.

As such, the claim, in its current context, does not accord with the evidence relied on by the respondent. The claim is therefore likely to mislead in a manner that contravenes Clause 4.2.1 of Section II of the Code.

Based on the above, the respondent is required to:

- Withdraw the relevant claim;
- Action the withdrawal of the claim with immediate effect upon receipt of this ruling;
- Ensure that the claim is withdrawn within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
- Not use the claim in the current format again in the future.

This aspect of the complaint is upheld.

4) "MULTIPLE LAYERS OF STEEL CASING AND CEMENT PROTECT GROUNDWATER AQUIFERS"

Here the first complainant raised several issues, which can be summarised as follows:

- The steel casings and cement are primarily used to maintain the well's integrity, and not to protect these aquifers.

- The manner in which the aquifers are depicted on the image contained in the advertisement creates an impression that they flow just below the earth's surface, whereas the aquifers typically found in the Karoo flow substantially deeper. In such instances, the steel casing and cement referred to will not even be present at the depths at which the aquifers run.

- The number of steel casings and cement sections shown in the advertisement differ from those presented at various public meetings.

- As a result of this, the complainant argues that the above factors constitute a breach of Clause 1.2.3 of Appendix J, which requires "All environmental claims and statements made in advertising [to] provide accurate information, meaningful to the consumer and based on recognized scientific standards and principles".

In dealing with this issue, the respondent firstly clarified that the fact that the steel casings and layers of cement are aimed at protecting the integrity of the well by default includes the prevention of leakage during the process of hydraulic fracturing. Put simply, the process of protecting the "integrity of the well" includes the prevention of contamination of aquifers. This portion of the complaint is therefore based on uninformed perceptions.

In relation to the visuals and the depth of the actual aquifers, it pointed out that each well will necessarily have its own location-specific well design and configuration to appropriately deal with the circumstances at that well. Naturally the number, length and depth of the relevant casings and cement layers will be adapted accordingly. The image used in the advertisement is for illustrative purposes only, nothing more.

The Directorate is inclined to accept the respondent's argument. There is no reason to believe that any hypothetical reasonable person would interpret the image used in the advertisement as the final, definitive schematic, meaning that in all wells the aquifers run at that exact depth, and that the shale gas is always found at that depth. It is reasonable to expect that the schematic used is for the sake of illustrating the basic approach and drilling method only, nothing more.

Given this, the Directorate is satisfied that the claim and schematic is not misleading in the manner alleged by the first complainant.

It also stands to reason that the objections raised in relation to Appendix J fall away by default, as these were based solely on the understanding that the claim and schematic are misleading, which has not been found to be the case.

This aspect of the complaint is dismissed.

5) "There has never been a single documented case of groundwater contamination resulting from fracturing, according to a host of independent environmental regulators."

The first complainant alleged that this claim is false and misleading as there are various print and online articles as well as representations by various internationally-renowned academics that have attested to the contamination of groundwater as a consequence of fracturing. In addition, the advertisement refers to only "groundwater contamination" and not to surface water contamination or contamination of water in general. This is misleading as hydraulic fracturing can result in contamination of both surface water and groundwater.

The second complainant effectively raised the same concerns, arguing that the respondent appears to ignore reports to the contrary of its claims.

The respondent took issue with the fact that the complainant submitted no actual evidence in support of its allegation. It added that while such cases have been "reported" there is yet to be one conclusive incident where groundwater contamination can be proven to be a result of hydraulic fracturing. It added that the topics dealt with in the advertisement are not intended to be exhaustive, but rather aimed at dealing with specific issues and concerns that were raised at the public meetings. It relied on the document titled "THE FACTS ABOUT SHALE GAS", submitted as Annexure B to its response.

Clearly the Directorate's first question centres on whether or not the respondent has submitted adequate substantiation to satisfy the requirements of Clause 4.1 of Section II in support of this claim.

The claim effectively lends itself to an extensive literature study. In effect, it implies that, when one considers all reports, documentation and research done on this subject by independent environmental regulators, one would not find a "single documented case" alleging that groundwater contamination was caused by hydraulic fracturing.

Whether or not this is actually true is beside the point at this time, because the respondent has merely submitted a long list of quotes and extracts from people or entities on the issue, which makes similar claims. This is not, however, adequate, because it lacks verification of the implication created.

Put simply, the Directorate would have expected the respondent to submit a report from an independent and credible expert in this field to confirm firstly that he or she has examined ALL literature from such environmental experts on this subject, and secondly, that in ALL the aforesaid literature not a single case is made that groundwater contamination was caused by hydraulic fracturing. While true that this would be an enormous task, the fact remains that the respondent's claim implies that this has been done, which is not, based on the information at hand, true.

Given this, the claim "There has never been a single documented case of groundwater contamination resulting from fracturing, according to a host of independent environmental regulators" is currently unsubstantiated and in contravention of Clause 4.1 of Section II of the Code.

Based on the above, the respondent is required to:

- Withdraw the relevant claim;
- Action the withdrawal of the claim with immediate effect upon receipt of this ruling;
- Ensure that the claim is withdrawn within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
- Not use the claim in the current format again in the future.

This aspect of the complaint is upheld. In light of this, there is no reason to consider whether or not this claim is also in contravention of Appendix J as alleged by the complainant.

6) References to David Neslin and Jeff Cloud, from the Colorado Oil and Gas Conservation Commission and the Oklahoma Corporation Commission respectively as "Top environmental regulators"

The main argument here appears to be that the first complainant does not regard these two individuals as "top environmental regulators", due to the fact that Mr Neslin represents the Colorado Oil and Gas Conservation Commission, which regulates this industry and is responsible for Colorado's oil and gas resources. Although this forms part of its duty, environmental regulation is not its core function. Instead, it deals largely with issues such as issuing permits and enforcing operational rules.

Likewise, Mr Cloud, and by inference the Oklahoma Corporation Commission, is a regulatory agency that is focussed on fuel, oil and gas, public utilities and transportation duties, which hardly qualifies it as a "Top environmental regulator". The implication created in the advertisement is therefore misleading.

The respondent effectively denied the complainant's interpretation, and pointed out that the report on modern shale gas development in the Unites States that was prepared by the Ground Water Protection Council of Oklahoma City for the US Department of Energy contains the relevant extracts and comments made by these people on behalf of their organisation. The US Environmental Protection Agency, during May 2011, echoed the sentiments expressed by these representatives, lending more credence to their comments.

The difficulty that the Directorate faces here is that it is not in a position to proclaim either of the two entities referred to in the advertisement as a "top environmental regulator". Similarly, it cannot decide whether or not the conclusions reached by these entities are material.

In the matter of Cell C "Speed" / MTN / 16737 (9 December 2010), the Directorate dealt with similar objections by the complainant regarding claims related to the 2010 Broadband Survey. Relying on the decisions in Opel Corsa Lite / VW CitiGolf / 9636 (19 September 2007) and Crown Relocations / Elliott International / 11358 (29 July 2008), it held, *inter alia*:

> "The respondent's claim is based on a survey done by an independent website, and the advertisement states this. The MyBroadband article dated 12 October 2010 gives an overview of the survey results, which show that Cell C's HSPA+ network delivered the fastest local download and upload speeds. In addition, a MyBroadband article dated 19 October 2010 confirms that this network received the award for '2010 Mobile Broadband Service of the Year'. The MyBroadband awards are based, according to the article, on an annual consumer trust survey and the 2010 Broadband Survey. Accordingly, the respondent did come out as

the network with the fastest local download and upload speeds in terms of the 2010 Broadband Survey, and it received the award for '2010 Mobile Broadband Service of the Year' based, at least in part, on this. It is therefore *ex facie* true that, according to the 2010 Broadband Survey, Cell C's HSPA+ network is the fastest.

Consumers have the option of deciding whether the 2010 Broadband Survey is reliable and significant or not. The respondent cannot logically be penalised for relying on what still appears to be a valid accolade. Any issue that the complainant has with the methodology and findings of the survey must be addressed with MyBroadband".

In the advertisement, the claims made are referenced and contextualised with a disclaimer reading "US Senate Environmental and Public Works Committee, April 12, 2011. Testimony from David Neslin (Colorado Oil and Gas Conservation Commission director, Jeff Cloud, Oklahoma Corporation Commission vice chairman".

An interested reader would therefore accurately be informed that the claims relied on was informed by the testimony of these two gentlemen. Clarity is also provided in terms of who they represent. This enables the reader to make an informed decision as to whether they wish to attach any credence to the statements or not.

Given this, and given that the Directorate is not mandated, or empowered to determine whether the entities referred to can be regarded as "Top environmental regulators", the Directorate does not believe that this claim and reference falls foul of the provision of the Code.

This aspect of the complaint can therefore not be considered at this time, based on the complaint at hand.

7) "... fracturing has been responsibly used tens of thousands of times for decades [in Colorado and Oklahoma] to enhance oil and natural gas development".

The first complainant took issue with the statement that "... fracturing has been responsibly used tens of thousands of times for decades [in Colorado and Oklahoma] to enhance oil and natural gas development", arguing that both states have had to endure many instances of environmental degradation due to hydraulic fracturing.

It added that this is also in contravention of Clause 2.1 of Appendix J by virtue of the fact that the claim is not substantiated. This clause reads "Advertisements containing unqualified claims and statements about environmental matters will be interpreted as meaning 100%, and shall be subject to substantiation".

From the response submitted, it would appear that this statement is the respondent's version of, interpretation of, or paraphrasing of what was said my Mr Neslin and Mr Cloud.

The problem with this, however, is that the claim appears as part of the respondent's own information, given prior to that of the above people, and as the respondent's answer to the question "Has hydraulic fracturing ever impacted groundwater resources or water wells?" It therefore comes across as a statement of fact, rather than an opinion, and implies that over decades this process has been used tens of thousands of times in a responsible manner.

In accordance with the provisions of Appendix J, the respondent should have substantiation for this claim. No unequivocal substantiation was provided for this specific claim.

Accordingly, the claim that fracturing has been responsibly used tens of thousands of times for decades [in Colorado and Oklahoma] to enhance oil and natural gas development" is currently unsubstantiated by virtue of this, in contravention of Clause 2.1 of Appendix J of the Code.

Based on the above, the respondent is required to:

- Withdraw the relevant claim;
- Action the withdrawal of the claim with immediate effect upon receipt of this ruling;
- Ensure that the claim is withdrawn within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
- Not use the claim in the current format again in the future.

This aspect of the complaint is upheld.

8) "Disclosure / Transparency"

Under this heading, the following wording appears:

> "Q. Why won't Shell say what additives would be used in the fracturing process?
>
> A. For the exploration project, we will disclose fracturing liquids at each drilling location, and consult with communities as part of the development of hydraulic fracturing plans. A typical fracture treatment uses very low concentrations of between three and 12 additives, depending on the unique characteristics of each well. The U.S. Department of Energy maintains a list of those additives, as well as other useful information, online at ... Since each well is unique and requires a different blend of additives depending on a number of factors, including the geology of the shale formation, depth of the formation and temperature of the rock at depth, Shell cant be more specific at this time".

In this instance, the first complainant raised several issues, which can be summarised as follows:

- There are several more than 12 additives that could be used in the process. During the public meetings held, the respondent commented that the full list is very extensive, and that it does not intend to use all the additives.

- Several of the chemical additives used pose severe risks to human and environmental health.

- By making the misleading claim that only few additives would be used and that it cannot be more specific at this time under the heading "Disclosure / Transparency", the respondent is deliberately deceiving readers.

- By virtue of the above, the advertisement and more specifically this section is in contravention of Clause 1.2.4 of Appendix J, which prohibits "...vague, incomplete or irrelevant statements about environmental matters ..."

The respondent correctly pointed out that the complainant has misinterpreted the claims at issue. The fact that there may be several more additives that *could* be used for hydraulic fracturing does not negate the claim that a typical fracture treatment uses between three and twelve additives from that comprehensive list. Had the complainant read the online document referenced in the advertisement it would have also noticed that this argument is supported therein.

Considering this aspect of the advertisement as a whole, any reasonable person would realise that:

a) The respondent is giving an explanation of what is likely to be the case, barring any unforeseen complications (hence the use of the words "A typical fracture treatment"

b) The respondent will fully disclose the relevant additives used at each location of a well, and

c) The conditions at each well differ, and as such it is not practically possible to give a more definitive answer until the location-specific assessments have been done and an accurate picture can be painted of the circumstances.

Any comments that may, or may not have been made at the public hearings are largely irrelevant insofar as the ASA is concerned, as these do not amount to "advertising" as defined by the Code.

Given that the complainant has attached an overly critical interpretation of the relevant section of the advertisement, the Directorate does not share its views. Accordingly, this section of the advertisement is not in contravention of the Code in the manner alleged by the complainant.

This aspect of the complaint is dismissed.

9) Identification of editorial style print advertisements

Finally, the first complainant argued that in terms of the requirements of Clause 2.1 of Section V of the Code, this advertisement should have contained a clear heading reading "ADVERTISEMENT".

The respondent submitted that the overarching requirement under this section of the Code is that headings such as proposed are necessary only when the advertisement in question could potentially be confused with news content or editorial matter. Given the location, font, content, and most importantly the fact that a large Shell logo appeared on the top right hand corner of the advertisement, there is no risk of any person being confused into thinking this is anything but an advertisement. The fact that the word "ADVERTISEMENT" was not used as a heading was not to mislead people, but because of a bona fide belief that this would be apparent to any reader.

Nevertheless, it undertakes to ensure that all future advertisements are styled in a manner to make it sufficiently clear that they are advertisements, so as to avoid confusing even the most sensitive of readers.

Given that the respondent's undertaking does not specifically confirm an intention to use a heading "ADVERTISEMENT", and given that there is a question as to whether or not the requirement to do so actually applies, the Directorate was compelled to consider this complaint and rule on it in order to provide finality to the parties.

Considering the wording of the entire Section V of the Code, the Directorate agrees that the primary onus placed on advertisers is to ensure that there is no confusion as to the nature of their material. In the event that readers may not be able to clearly determine whether the material is advertising or perhaps editorial or news, clear headings should be used.

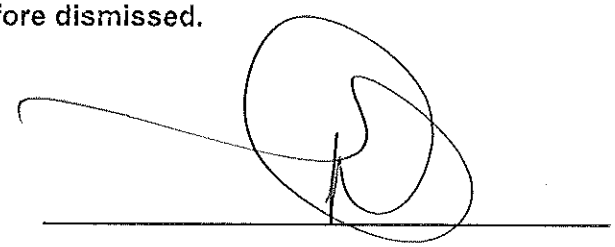
Clause 1 of Section V states "There is an obligation on all concerned with the preparation and/or publication of a print advertisement to ensure that anyone who looks at the advertisement is able to see, without reading it closely, that it is an advertisement and not editorial matter". Clause 2 also refers to the requirement for a heading "ADVERTISEMENT" as a "guideline". In addition to this, Clause 5 specifically states "No guidance can cover every case. It may not be enough merely to follow to the letter what is said above. It may also be necessary to look again at each advertisement to see whether it is clearly distinguishable from the editorial content of the publication in which it appears and if not to take steps to ensure that it is".

The Directorate agrees with the respondent that any reasonable person would immediately realise that this advertisement is just that. It clearly displays the respondent's corporate identity and deals only with issues relating to the respondent's intentions and proposals. The content is not presented as news or even editorial, and there can therefore be no question that "...anyone who looks at the advertisement is

able to see, without reading it closely, that it is an advertisement and not editorial matter".

As such, the respondent's advertisement is not in contravention of Clause 2 of Section V of the Code as alleged by the complainant.

This aspect of the complaint is therefore dismissed.



ON BEHALF OF THE ASA DIRECTORATE