



## Advertising Standards Authority of South Africa

(Association incorporated under Section 21)

Telephone 011 781 2006 Fax 011 781 1616 Email info@asasa.org.za Website www.asasa.org.za  
 Willowview Burnside Island Office Park (entrance off Athala) 410 Jan Smuts Avenue Craighall Park PO Box 41555 Craighall 2024  
 Company Registration Number 1995/00784/08 Non-profit Registration Number: 043-694-NPO

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**To:** Mr Steve Yeates **Fax:** (012) 362-6440  
 Adams and Adams

**From:** Mrs Farzana Omar

**Date:** 15 June 2007

**REFERENCE: VIRGIN MOBILE / A VAN DER WERFF AND OTHERS / 9122**

Dear Mr Yeates

We refer to the above matter and enclose herewith a copy of the Advertising Standards Authority Directorate Ruling.

Yours faithfully  
**THE ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA**

*PP. 6/2007*  
**FARZANA OMAR**  
**CONSULTANT: DISPUTE RESOLUTION**  
 PM

Encl: ASA Directorate Ruling (8 pages)



President: Mervyn E. King SC

Directors: IRB Shepherd (Acting Chairperson) TN Msibi (CEO) KH Willenberg SF du Plessis JR May N Nkomo DR Terblanche



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 Company Registration Number: 1995/06784/EC Non-profit Registration Number: 243-674-NPO

### RULING OF THE ASA DIRECTORATE

In the matter between:

<b>MR ALAN M.A VAN DER WERFF</b>	<b>FIRST COMPLAINANT</b>
<b>DEBBIE PITT</b>	<b>SECOND COMPLAINANT</b>
<b>HERMIEN BASSON</b>	<b>THIRD COMPLAINANT</b>
<b>JOLENE DU PLESSIS</b>	<b>FOURTH COMPLAINANT</b>
<b>MR BRAD LANE</b>	<b>FIFTH COMPLAINANT</b>
<b>MISS BELINDA M KITNEY</b>	<b>SIXTH COMPLAINANT</b>
and	
<b>VIRGIN MOBILE SOUTH AFRICA (PTY) LTD</b>	<b>RESPONDENT</b>

15 June 2007

#### **VIRGIN MOBILE / A VAN DER WERFF AND OTHERS / 9122**

Consumer complaints were lodged against a Virgin Mobile television commercial screened during May 2007 on various television stations.

During the commercial, the words "4 SIMPLE PACKAGES" appear on screen and the voiceover states, "Well here it is, four simple packages with amazingly good value...". The scene dissolves to a pool setting where four men are shown standing on a podium, holding up medals. At this stage an old woman is introduced who, using a walking stick as a hook, peers down the front of one of the male swimmers' speedos. The lyrics "The truth will set you free.." are then heard.

#### **COMPLAINTS**

In essence, the complainants submitted that the commercial is offensive and degrades the elderly, as an old lady, who is presented as lustful, is shown using her walking stick

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to look at the genitals of a man. This will lead to the disrespect of the elderly. In addition, the lyrics "the truth will set you free" are blasphemous and offensive as it is quoted indirectly from the Gospel of Jesus Christ.

The complainants also raised concerns about the commercial being unsuitable for children to watch as it is sexual in nature.

### RELEVANT CLAUSES OF THE CODE OF ADVERTISING PRACTICE

In light of the complaints the following clauses of the Code were taken into account:

- Section II, Clause 1 - Offensive advertising
- Section II, Clause 14 - Children

### RESPONSE

Attorneys Adams and Adams, on behalf of the respondent, submitted, *inter alia*, the following:

- The commercial is amusing and depicts an exaggerated and improbable event. It is hyperbolic in nature and is portrayed in a tongue-in-cheek manner.
- The reasonable viewer would not interpret the commercial as portraying elderly persons as being sexually improper or lustful. In fact, the use of the old lady simply enhances the humorous nature of the commercial and is totally innocent. If a young woman had taken a "peek", one could argue that there was some sexual or improper connotation.
- The references to "4 simple packages" is extremely subtle yet humorous. At no stage whatsoever does the viewer see genitalia or sexual behaviour. Sex is not promoted in an improper manner and children are not encouraged to become sexually active or to act improperly.
- The commercial is only flighted during prime viewing times, when it is likely that an adult who can provide explanations or guidance on the commercial will accompany children.



- Regarding the phrase "The truth will set you free", the respondent submitted that the phrase is commonly used in everyday language. It may have originated from the Bible, but has become commonly used in everyday business and does create a link to the Christian faith. Reasonable viewers would not interpret the phrase as a reference to a Bible verse. Even if this were so, the phrase is not a basic tenet of the Christian religion.
- The respondent also referred the Directorate to previous ASA rulings in support of its argument.

## ASA DIRECTORATE RULING

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

### Offensive advertising

Clause 1 of Section II states, *inter alia*, that advertising may not offend against good taste or decency and should not cause serious or widespread offence. It further clarifies that consideration should be given to, *inter alia*, the context, medium, likely audience and nature of the product advertised.

The complainants submitted that the commercial depicts the elderly in an improper manner and that this will lead to disrespect of the elderly. Furthermore, the lyrics "The truth will set you free" are blasphemous as it is a quote from the Bible.

Essentially, there are two issues that the Directorate needs to consider with reference to this Clause:

1. Whether the action of the elderly woman is offensive in terms of the Code; and
2. Whether the use of the phrase "The truth will set you free" is offensive.

The Directorate acknowledges that the elderly are often abused in our society, and that commercials that condone the abuse of the elderly would not be acceptable. Having said that, it must be clarified that the mere depiction of an elderly person does not *per se* render such advertising unacceptable.

What needs to be considered is how the hypothetical reasonable person would objectively perceive the commercial. Accordingly, one cannot adopt a hypercritical or oversensitive approach.

The commercial commences with a man crying while browsing through a newspaper looking at the various cellphone deals. The voice over states, "Why is it so complicated to get a cell phone? They give us so many options and pretend it's all about giving us a choice".

The next scene features a group of people at a swimming pool, and shows, *inter alia*, four swimmers on a podium. The voice over states "Well, here it is, four simple packages of amazingly good value from Virgin Mobile". At this stage, an elderly woman takes a peek into one of the swimmers trunks. During this time the background music, repeats the chorus "The truth will set you free". These words also appear on screen. The scene in question is therefore a visual pun on the dual meaning of the word "package", which can be used to refer to a man's genitals.

In Sasol / B Olive and others / 1390 (29 July 2005), the Directorate considered complaints relating to a commercial that featured a little boy climbing onto a sleeping old man's lap. The child rapidly shakes the old man's head back and forth. The complainants submitted that the commercial was disrespectful and offensive to the elderly. The Directorate ruled that the hypothetical reasonable consumer would find the commercial to be innocuous, entertaining and amusing. Furthermore, it was not a realistic situation. The complaints were dismissed.

In Fattis and Monis / K Yeomans and B L Stone (25 January 2002), complaints were lodged against a commercial that featured an elderly lady preparing an Italian meal. When she finished, a younger lady placed her in the cupboard and closed the door. The younger lady removed the food from the kitchen as if she was the one who had prepared the meal. The complainants in this matter submitted that the commercial was offensive and irresponsible as it showed disrespect for the elderly. The Final Appeal Committee found that the whole context of the commercial was to amuse, and the reasonable consumer would view it as humorous, and not offensive.

A similar approach can be applied to the matter at hand.

When the elderly woman takes a peek at the swimmers "package", the voice over informs viewers of the four packages available from the respondent. It is clear from this that the aim of the commercial was not only a tongue-in-cheek play on the word



"packages", but also to highlight the simplicity and easy access to Virgin Mobile's product offerings.

The scene is clearly exaggerated, as one would expect the relevant swimmer to react when having his trunks pulled forward. Instead, the swimmer appears to be unconcerned by it, as are the other people present.

It is vital to point out that none of the actors appear forced to act in this manner. This is significant because any element of force could possibly imply that it is acceptable to disregard the feelings of others.

In Good Hope FM / H. Venables and Others (12 December 2005), the Final Appeal Committee ruled that "A woman has a conscious self and is entitled in a free and democratic society to portray sexuality".

Accordingly, women are allowed to express their sexuality and sexual curiosity. This naturally extends to elderly woman. The commercial will not encourage disrespect of the elderly as submitted by the complainant. If anything, it supports the notion that one can still have an inquisitive mind at a mature age, which cannot be offensive.

The pun on the word "packages" and the curiosity of the old lady, if anything, amplifies the intended humour. The hypothetical reasonable person would realise this, especially given that the old lady's behaviour is not something one would realistically witness or expect in everyday life.

In addition, the commercial is 46 seconds long and the scene depicting the elderly woman "peeking" is approximately 4 seconds. This is an insignificant time period within the context of the overall commercial, and illustrates the respondent's objectives to highlight and inform consumers of its cell phone deals.

**Given the above, the scene showing the elderly lady inspecting the swimmer's "package" is not offensive in terms of the Code.**

The lyrics "The truth will set you free..." are used to highlight the respondent's offerings compared to other networks, and convey the message that Virgin Mobile has deals that are easy to understand. This is further conveyed by the actress stating, "Truth is, they're deliberately trying to confuse us so that we don't know how much we're really paying..." .

The respondent correctly argued that the phrase "The truth will set you free" has become commonly used in everyday language and in almost any situation, to such an extent that it has become a cliché. There are also books and music albums that bear the name. Thus, it cannot be said that the use of the lyrics are blasphemous, as it appears that this phrase has become secular.

**For all the reasons set out above, the commercial cannot be said to be offensive to the hypothetical reasonable person. Accordingly, the commercial does not contravene Clause 1 of Section II of the Code.**

### Children

Clause 14.1.1.1 of Section II states that advertisements addressed to or likely to influence children should not contain any statement or visual presentation that might result in harming them, mentally, morally physically or emotionally. In addition, it stipulates that advertising should not encourage children to emulate potentially dangerous behaviour.

The complainants are concerned about the scene where the elderly woman peeks into the swimming trunks of a swimmer and the effect that this will have on children.

It is accepted that the commercial is not aimed at children, as this is not the respondent's target. However, given that the commercial shows during peak times, children would inevitably be watching television, which means they are exposed to this commercial.

Having said that, the Directorate has established that this commercial is hyperbolic to such an extent that even children would realise that the depictions are not literal.

The respondent correctly argued that at no point is any graphic or visual depiction of genitalia shown, nor is any sexual activity depicted or even suggested.

In Mark Gillman Radio Show / A Truter and Others / 394 (22 March 2005), the Directorate stated that the respondent was correct in saying that at no point does one see genitalia or any sexual activity. Only an adult who is familiar with the concept of bondage outfits would relate them to sexual activities. What is relevant to note is that while this commercial had slight sexual innuendo, it was still considered acceptable.

**Based on the above, the commercial is not in contravention of Clause 14 of Section II of the Code.**

The complaints are therefore dismissed.

  
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**ON BEHALF OF THE ASA DIRECTORATE**