



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**Date of Hearing: 27 January 2022**

**Case No: 430/2021**

**LICENSING AND COMPLIANCE DIVISION OF ICASA**

**COMPLAINANT**

**V**

**CAMPUS BAY FM**

**RESPONDENT**

**CCC MEMBERS:**

Judge Thokozile Masipa – Chairperson  
Councillor Yolisa Kedama- Member  
Mr Monde Mbanga - Member  
Mr Peter Hlapolosa - Member  
Mr Thato Mahapa - Member  
Mr Paris Mashile - Member

**FROM THE OFFICE OF THE CCC:**

Lindisa Mabulu - CCC Coordinator  
Meera Lalla - CCC Assessor  
Xola Mantshintshi - CCC Assessor  
Thamsanqa Mtolo - CCC Assessor

**LEGAL REPRESENTATION FOR PARTIES**

**LEGAL REPRESENTATIVES**

For the Complainant – CCA OF ICASA  
Ms. Busisiwe Mashigo  
Ms. Fikile Hlongwane

For the Respondent – Campus Bay FM  
Ms. Angelique Schneider

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## JUDGMENT

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Judge Thokozile Masipa

### INTRODUCTION

[1] The Licensing and Compliance Division of ICASA (“the CCA”) brought a complaint against the Respondent Bay FM. The basis of the complaint was that Bay FM contravened **regulation 6 (14) of the Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2021.**

### SUMMARY OF THE COMPLAINT

[2] During its Compliance Monitoring activity in response to 2021 Municipal Elections coverage, CCA noted a number of contraventions by Bay FM committed during the period 28 September to 8 October 2021.

Reproducing the list in full will serve no purpose. Suffice it to say that the list shows that the contraventions were, in some cases, repeated more than once in a day.

[3] The Charge Sheet reads that Bay FM is in breach of regulation 6(14) of the regulations in that it broadcast several Political Advertisements (PAs), for the Democratic Alliance (DA), (in both English and Afrikaans), in contravention of the provisions of regulation 6(14) which provides that:

*“A broadcasting service licensee that broadcasts PAs must ensure that all PA broadcasts are clearly identified through a standard pre-recorded introductory and concluding message (top and tail) disclaimer.”*

[4] Consequently, the CCA lodged the present complaint. In response to the complaint against it, Bay FM responded in a letter dated 14 December 2021. In part the letter, signed by the station manager, Angelique Schneider, read as follows:

*“... the cutting of the top and tail off the advert was a genuine mistake on the part of our technical team.*

*The advert booking came with other material as well, and it all went through the same process, with emphasis placed on loading the material on time (we have a very limited staff compliment at the moment).*

*We regularly discussed the elections and its on air protocols as a team. It was definitely frustrating when I picked up the error, and we endeavored to ensure it was not repeated again.*

*Attached hereto is our booking form as well as invoice, in support of the fact that the material was definitely paid for.*

*Also attached is an email confirming the booking, its costs and expected day of payment for the campaign, as well as the letter from the production manager regarding the incident. We would like to stress that the campaign was flighted as per the booking, and no irregularity pertaining to the campaign was intentional.*

*As a station, we purpose to serve and service our community with passion and integrity and have not taken our mistake lightly.”*

- [5] The same day, that is, 14 December 2021, the production manager, Melligan Langesa, wrote an email explaining the circumstances in which the error occurred. Langesa confirmed that what happened was unintentional and that the mistake was rectified immediately after it was identified. An apology followed, as well as an assurance that the fault would not occur in future.

## **THE HEARING**

- [6] At the hearing, it was ascertained among other things, that though it was not clear on the papers, the Respondent's admissions to contravening Regulation 6 (14) was in respect of all the incidents cited in the charge sheet.

## **FINDING**

- [7] Having perused the Charge Sheet and having heard both the Complainant and the Respondent, the CCC was satisfied that the Respondent had properly made admissions in respect of all the incidents of contravention as set out in the Charge Sheet.

**[8] Accordingly, the following finding was made:**

**8.1 The Respondent is found to have been negligent in that it contravened Regulation 6(14) of the Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations 2021, when it broadcast PAs without the mandatory top and tail disclaimer.**

### **ARGUMENT IN MITIGATION**

[9] In her submissions, Ms Schneider reiterated that the contravention was unintentional, a mistake genuinely regretted. According to Ms Schneider, challenges that the station had to contend with during the election period included the fact that Campus Bay operated on a skeleton staff at the time because of the Covid-19 pandemic. Added to this, there were also time constraints related to the election period.

[10] Ms Schneider was the only person at the time to see that the flighting of the PAs were done correctly. There were no checks and balances in place. As a result, only two instances of the contraventions came to her attention and these she corrected immediately. She was not aware of the other instances listed on the charge sheet. She could not say if, at the time, some people were aware of the mistake. If they were, they certainly did not bring this to her attention. She, however, took responsibility for the station's transgressions and stated that she should have paid closer attention to the work at hand.

### **CONCLUSION**

[11] An analysis of the response from the Respondent show a number of key features namely:-

11.1 There was an admission of wrongdoing.

Without any prompting, the Respondent admitted that it had contravened the regulations as alleged. Even though at first the nature and scope of the admission were not clear, it transpired during the hearing that the

Respondent was admitting all the incidents listed in the Charge Sheet. What also transpired during the hearing was that the phrase “in both English and Afrikaans” in the Charge Sheet did not allude to a contravention. It was merely an illustration that the broadcast, which was a contravention, was broadcast in the two languages mentioned.

#### 11.2 There was an expression of remorse.

On behalf of the Respondent, Ms Schneider apologized for the contravention and stated that none of what happened was intentional.

[I pause to state that an intention is not a requirement to make a finding of contravention]. The key phrase in the Regulation is that the Respondent **must ensure ...**” The connotation is that the Respondent “must be careful” which is the opposite of “being negligent”.

#### 11.3 There was a plausible explanation on how the contravention occurred.

Furthermore, the Respondent explained how the “error” occurred and what steps were taken to ensure that the mistake did not happen again.

[12] To sum up, remorse is always an appropriate consideration in the adjudication process especially during the penalty phase. As a result, the CCC took this into account. Also taken into account were other mitigating factors, (such as having to work with a skeleton staff as a result of the pandemic), and the uncertainty relating to the election date.

[13] On the other hand, the mitigating factors must be balanced against aggravating factors such as the seriousness of the contravention.

That the contraventions in this matter are serious cannot be denied. Even the Respondent conceded that failure to include the top and tail disclaimer when broadcasting a PA is serious.

[14] This was a concession correctly made. I say this for the following reasons:

This was not the first election experience for the Respondent, yet it knowingly had only one person, that is, Mrs Schneider, at the helm, during the election period. There were also no checks and balances in place, which on its own, was a recipe for disaster.

[15] It is no wonder then that the transgression in this case took place over a number of weeks, from the 28 September to the 8 October and that the station manager was not even aware of them with the exception of only two of such incidents. That this should have happened under the watch of someone with Ms Schneider's experience is worrisome.

[16] Granted she correctly stated during her submission that she should have been more vigilant. That admission is commendable and gives credibility to the Respondent's expression of remorse. On the other hand, it serves to demonstrate the importance of preparation for elections on the part of broadcasters who are going to be fighting Political Advertisements. It is also a demonstration of what is likely to happen if there is no proper preparation.

[17] Serious as the contravention is in the present matter, it is important to bear in mind that an element of mercy must be included as an integral part of a sanction. The CCC must guard against being too harsh. The aim of the penalty that the CCC recommends, must not break the Respondent. Instead, the sanction, though punitive by nature, ought to serve as an incentive to the Respondent to do better in the future.

## **ORDER**

[18] Having regard to all the relevant facts in this matter, the CCC recommends the following orders to be issued by the Authority namely -

- (a) direct the licensee to desist from any further contravention;
- (b)(i) direct the licensee to pay as a fine in the amount of R5000 in respect of each day in which the contravention occurred;
- (b)(ii) direct the licensee to deploy a dedicated team of four people who would individually check the Pas before they are flighted;
- (c) direct that the order in (b)(i) above be suspended until after the next Municipal Elections on condition the licensee is not found, during the period of suspension, to have contravened regulation 6(14) of the Municipal Elections

Party Elections Broadcasts and Political Advertisements Amendment Regulations 2021.

(d) direct the licensee to take the following remedial steps:

- (i) Campus Bay FM must, the first week after this order is issued, broadcast in English and in Afrikaans once a day for five consecutive days as its first item as its news service the following statement at a time between 7h00 and 21h10 in English and then in Afrikaans in the same News Bulletin. The times of the broadcast must be notified by email to the Broadcasting Manager of the CCA at least 24 hours before the broadcast. Such broadcast may not be accompanied by any background music or sound and the item must be read formally by the Station Manager, or her representative who must declare on air that she is the Station Manager or her representative.

*"The Independent Communications Authority of South Africa has found that this station has contravened Municipal Elections Party Election Broadcasts and Political Advertisements Amendment Act, 2021 in that it flighted PAs without making statements clearly identifying them as advertisements and without a top and tail disclaimer on several occasions. This is in conflict with the ICASA Regulations which require such statements to be made before and after the advertisement. This station further extends its apology to ICASA and to its listeners for having committed these contraventions.*

*TMMasipa*

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**Date:** 21 April 2022

**Judge Thokozile Masipa**  
**CCC Chairperson**