

In the matter between

SOUTHERN AFRICAN ALCOHOL POLICY ALLIANCE

APPLICANT

AND

SUNDAY TIMES

RESPONDENT

MATTER NO: 8834/03/2021

DECISION ON APPLICATION FOR LEAVE TO APPEAL

1. Southern African Alcohol Policy Alliance (“applicant”) lodged a complaint against Sunday Times (“respondent”) in respect of some three articles that appeared on page 7 of respondent’s edition of 14 February 2021. The articles were entitled “*How South Africans defied the booze ban*”, “*Alcohol industry counts lockdown losses*” and “*Sensible drinking is a joint effort*”. As the articles indicate, they were in response to the sale or non-sale of alcohol under the Covid-19 lockdown. It would be fair to say that the articles took a stance that was against the prohibition or restriction of alcohol, which was what irked the applicant given what it stood for.
2. The applicant’s complaint was that the articles were in breach of articles 2.1, 2.2, 2.3 and 2.4 of the Press Code, which I need not reproduce here. In summary, the complaint in relation to articles 2.1 and 2.2 was that the articles were so-called “*native advertising*”; that is advertising disguised as editorial; that respondent blurred the distinction between editorial and advertorial by using its staff reporters to write two of the three articles; that the respondent associated itself with the alcohol industry’s position on alcohol by presenting the three articles as “*Editorial Partnership*”; and that the opinion piece, being

the third article, was not countered by alternative views; that the respondent, by taking money from the liquor industry, the South African Liquor Brand Owners Association (SALBA), for publishing the articles, allowed commercial considerations to influence its reporting, thereby creating a conflict of interest. The respondent, for its part, denied any breach of the Code, and argued that it had given sufficient warning to the reader that the articles were sympathetic to the interests of SALBA; it adopted the attitude that the articles were not editorial, despite the fact that the page was marked “*Editorial Partnership*”.

3. In his Ruling dated 1 June 2021, the Deputy Press Ombud dismissed the complaints in respect of articles 2.1 and 2.2, but upheld the complaint in respect of articles 2.3 and 2.4; a sanction was imposed. The applicant now seeks leave to appeal the dismissal of the two complaints and the respondent opposes the application.
4. For an application to succeed, an applicant must show reasonable prospects of success on appeal, and this is what I must now determine.
5. Of particular relevance is the following finding of the Deputy Ombud: “*In view of the fact that the content ... is paid or sponsored copy, this finding did not consider whether the material published was in breach of clauses 2.1 and 2.2, which apply in the main to editorial content*”, (own emphasis). The applicant takes issue with this finding. Two points arise. Firstly, the emphasis suggests that the Deputy Ombud’s finding is not categorical that 2.1 and 2.2 apply only in respect of editorial content. The second point raised by the applicant in its application, is that article 2.1 has more than one element, the third of which is the prohibition of “*practices that could lead readers to doubt the media’s independence and professionalism*”. This argument is raised against the

background that it is common cause that two of the articles were written by respondent's staff. As I am minded to grant leave to appeal, I deem it inappropriate to deal with the matter any further

6. In light of the above, the application succeeds, and leave to appeal is hereby granted against the Deputy Ombud's dismissal of the complaints based on the alleged breach of articles 2.1 and 2.2 of the Code.

Dated this 20th day of July 2021

Judge B M Ngoepe, Chair, Appeals Panel