

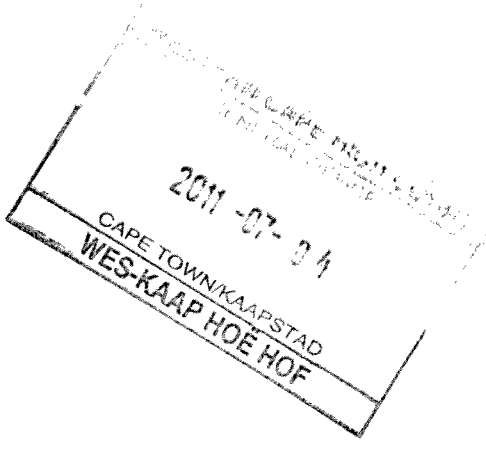


**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NO: 13278/11

In the matter between:

SANTAM LIMITED



Applicant

and

DIAL DIRECT INSURANCE LIMITED

First Respondent

JOE PUBLIC (PTY) LTD

Second Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made to the above Honourable Court by the abovenamed Applicant at 15:00 on Monday 4 July 2011, or so soon thereafter as the matter may be heard, for an order in the following terms:

1. That this application be heard as a matter of urgency, and that the forms and time limits prescribed by the Uniform Rules of Court be dispensed with.

2. That a rule *nisi* do issue calling upon the abovenamed First and Second Respondents and any other interested parties to appear, and show cause (if any) on a date to be determined by the Court, why a final order should not be granted in the following terms:
 - 2.1. Interdicting and restraining the First and Second Respondents (whether themselves or through their servants or agents) from directly or indirectly:
 - 2.1.1. publishing, disseminating, using, distributing, screening or broadcasting the cinematographic film advertising the First Respondent's and business which is described in the Applicant's founding affidavit (as "*the Yada Yada advert*"), or any extract from or adaptation thereof.
 - 2.1.2. Infringing the Applicant's copyright in the cinematographic film advertising the Applicant and its products, which film is described in the Applicant's founding affidavit (as "*the real McCoy*") by, without the Applicant's license or authority, doing any of the following:
 - (a) committing any of the acts referred to in section 23(1) of the Copyright Act, No. 98 of 1978 ("*the Act*");
 - (b) making any further adaptations of the real McCoy and/or the Yada Yada advert;
 - (c) in respect of the Yada Yada advert, or any adaptation thereof:
 - (i) reproducing it;
 - (ii) causing it to be seen or heard in public;
 - (iii) broadcasting or causing it to be broadcasted;
 - (iv) causing it to be transmitted in a diffusion service;

- (v) letting or offering or exposing for hire by way of trade, directly or indirectly;
- (vi) allowing it to be broadcast, disseminated or otherwise seen or heard on Youtube.

2.1.3. Disparaging the Applicant or its products.

- 2.2. Declaring the Yada Yada advert to be an adaptation of the real McCoy;
- 2.3. Directing the First Respondent forthwith to do all things required in order to terminate or withdraw the Yada Yada advert from any further publication, broadcast, dissemination or display by any television station, broadcaster, the South African Broadcasting Corporation, Etv, M-Net and/or Youtube, and to report to this Honourable Court all such steps which it has taken and the date on which such steps were taken;
- 2.4. Directing the First and Second Respondents to deliver up, alternatively to destroy, the original and all copies (whether electronic or in other form) of the Yada Yada advert and/or any extracts therefrom, and to report to this Court within a period to be determined all such steps as had been taken.
- 2.5. Directing that:
 - 2.5.1. an enquiry be held for purposes of determining the amount of any damages (as contemplated in section 24 of the Act) or reasonable royalty (as contemplated in section 24(1A) of the Act) or such additional damages as the Court may deem fit (as contemplated in section 24(3) of the Act) to be awarded to the Applicant against the First Respondent as a result of the infringement of the Applicant's copyright, in accordance with such procedures as this Honourable Court may deem fit (as contemplated in section 24(1B) of the Act); and

- 2.5.2. the payment be made by the First Respondent of the amount found to be due to the Applicant pursuant to such enquiry and determination, together with interest thereon, and the costs of such determination.
- 2.6. Directing the First Respondent to pay the costs of this application (including the cost attendant upon the engagement of two counsel).
- 2.7. That the Second Respondent pay the costs of this application only in the event that it opposed the relief sought herein.
- 3. That the provisions of paragraphs 2.1.1, 2.1.2, 2.1.3 and 2.3 above operate as an interim interdict against the First and Second Respondents pending the return day of this application.
- 4. For further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavits of **Anel Grobler, AJ King** and **D. Blumberg** annexed hereto will be used in support hereof.

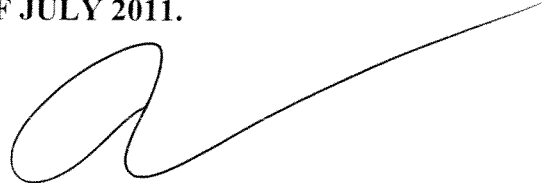
TAKE NOTICE FURTHER THAT the Applicant has appointed the offices of **Werksmans Attorneys, 18th Floor, 1 Thibault Square, Cape Town** as the address at which it will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if you intend to oppose:

- (a) Any of the relief sought herein you must forthwith notify the Applicant's attorneys thereof in writing, and appoint an address contemplated and referred to in the Uniform Rules of Court for the service of documents and process herein upon you; and

- (b) If you intend opposing the interim relief sought herein, you must appear and/or present at the hearing any answering affidavit(s) you may wish to adduce in relation to the interim relief sought herein.
- (c) If you intend opposing the final relief sought on the return day of the rule *nisi*, you must deliver answering affidavits on or before 16:00 on Friday 8 July 2011.

DATED AT CAPE TOWN ON THIS 4TH DAY OF JULY 2011.



Werksmans Attorneys
 Attorneys for the Applicant
 18th Floor
 1 Thibault Square
 Cape Town
 (Reference : J Hollesen / 021 809
 6011)

TO: THE REGISTRAR
 Western Cape High Court
 CAPE TOWN

AND TO: **DIAL DIRECT INSURANCE COMPANY LTD**
 First Respondent
 16th Floor
 Metal Box Building
 25 Owl Street
 Auckland Park
 GAUTENG
 c/o Block D
 Century Square

Heron Crescent

Century City

CAPE TOWN

AND TO: **JOE PUBLIC (PTY) LTD**

Second Respondent

201 Design Quarter

Leslie Road East

Fourways

JOHANNESBURG

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.

In the matter between:

SANTAM LIMITED

Applicant

and

**DIAL DIRECT INSURANCE LIMITED
JOE PUBLIC (PTY) LTD**

First Respondent

Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

ANEL GROBLER

do hereby make oath and say that:

[Handwritten signature]

1. I am the Head of Corporate Brand of Santam Limited, the Applicant herein. I am duly authorised to bring this application and depose to this affidavit on its behalf. I refer in this regard to annexure “**AG1**” hereto.

2. The facts contained herein are within my own knowledge and belief, save where the context indicates otherwise. Any legal submissions advanced in this affidavit are on the advice of the Applicant's legal representatives, which advice I accept as being correct.

THE PARTIES

3. The Applicant is **SANTAM LIMITED** with registration no. 1918/001680/06, a company with limited liability duly registered and incorporated in accordance with the laws of the Republic of South Africa with its registered address being 1 Sportica Crescent, Tyger Valley, Cape Province, where it carries on business as a short-term insurer.

4. The First Respondent is **DIAL DIRECT INSURANCE COMPANY LIMITED** with registration no. 1995/008764/06, a public company with limited liability duly registered as such in terms of the laws of the Republic of South Africa, with its registered address at 16th Floor, Metal Box Building, 25 Owl Street, Auckland Park, Gauteng, and its principal place of business within the area of jurisdiction of this Honourable Court situated at Block D, Century Square, Heron Crescent, Century City, Western Cape.

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5. The Second Respondent is **JOE PUBLIC (PTY) LTD**, a company with limited liability in terms of the company laws of the Republic of South Africa under company No. 1997/000238/07, with its principal place of business situate at No. 201, Design Quarter, Leslie Road East, Fourways, Johannesburg and with email address: gareth@joepublic.co.za.
6. The Applicant and the First Respondent are both short-term insurers and offer a range of short-term insurance products for sale throughout South Africa. They are direct competitors in the South African short-term insurance market.
7. The Second Respondent is an advertising agency and as such is bound by of the Advertising Standards Authority of South Africa's Code of Advertising Practice ("*the ASA Code*") which regulates the industry and its members.

NATURE OF RELIEF SOUGHT

8. The Applicant commissioned the making of a cinematographic film for use as a television advertisement, which features the international Oscar award winning actor Sir Ben Kingsley ("*the Real McCoy*"), and is vested with the copyright thereof. The Real McCoy has been published in South Africa since 8 May 2011 as part of an extensive TV media campaign. An electronic copy of the Real McCoy is stored on a disc marked "A", which will be filed with the Judge allocated to hear this application and will be presented at the hearing of the matter to be viewed by the Court on a laptop computer.



- 9. The Respondents have infringed the Applicant's copyright, and First Respondent is competing unlawfully with the Applicant, by having commissioned and published as part of a media campaign an advertisement for the First Respondent and its products which is a copy or an adaptation of the Real McCoy ("*the Yada Yada advert*"). This publication commenced on 1 July 2011 and the First Respondent has made it clear that it will not desist. This not only infringes the Applicant's copyright in the Real McCoy, but the content thereof also constitutes disparagement of the Applicant, its product and the Real McCoy, and unlawful competition. An electronic copy of the Yada Yada advert is also stored on the disc "A".

- 10. The First Respondent commissioned the Second Respondent to produce the Yada Yada advert.

- 11. The Applicant accordingly seeks to interdict and restrain the continued infringement of its copyright and the Respondents' unlawful conduct *inter alia* by restraining the flighting of the Yada Yada advert. It also seeks certain incidental declaratory orders and consequential relief against the First Respondent provided for in the Copyright Act.

THE REAL MCCOY

- 12. The making of the Real McCoy was arranged and commissioned by the Applicant as the foundation phase of an extensive rebranding exercise which the Applicant initiated in around August 2010.

- 12.1. As Head of Corporate Brand, I investigated and researched the rebranding of the Applicant pursuant to the Applicant's strategic objectives and areas of potential growth in the short-term insurance market.
- 12.2. Pursuant to the brief, the Applicant commissioned King James Advertising Cape Town (Pty) Ltd, ("*King James*"), a reputable and innovative advertising agency on the Applicant's behalf to:
- 12.2.1. research these objectives from a strategic and creative perspective in order to address the optimum market demographic;
- 12.2.2. to design an advertisement and media campaign for the Applicant appropriate to the Applicant's market and which would entrench the Applicant's distinctive brand;
- 12.2.3. to make a series of cinematographic films to be broadcast as television advertisements and in the electronic media.
- 12.3 King James was well remunerated by the Applicant for its services and the advertisements and campaigns they ultimately produced pursuant to the Applicant's commission.
- 12.4 King James applied its considerable advertising and creative expertise to our requirements and conceived and scripted advertisements and campaigns, including the Real McCoy. It then, on behalf of the Applicant arranged for the

Real McCoy to be produced. In this regard I refer to the affidavit of Alistair King, filed herewith.

- 12.5 The Real McCoy was filmed and the soundtrack produced in March and April 2011 at a cost to the Applicant in excess of R6 million, including the cost of Sir Ben Kingsley an international film star who features prominently therein, in order to create a distinctive brand image for the Applicant and an identifiable marketing motif which would serve as a component of the Applicant's goodwill.
- 12.6 The overall direct and indirect cost of the Applicant's rebranding campaign – of which the Real McCoy is merely the "*foundation phase*" – is infinitely greater. The overall cost of the campaign to date, including the Real McCoy totals more than R25 million.
- 12.7 The making of the Real McCoy was directed by Dean Blumberg, a highly respected film director, who was commissioned to do so by King James on behalf of Santam, for which he was well remunerated. In this regard I refer to the affidavit of Dean Blumberg, filed herewith.
- 12.8 King James is a South African company and consequently is both resident and domiciled in South Africa. Blumberg is also a South African resident and citizen.
13. The Real McCoy constitutes the fixation and storage on film and electronic matter of data, signals and a sequence of images capable, when used in conjunction with other

mechanic and electronic devices, of being seen as a moving picture and of reproduction, and includes the sounds embodied with the film (and is not a computer program). I am advised that the Real McCoy is therefore an original cinematographic film as defined in Section 1 of the Act and that it is eligible for copyright by virtue of Section 2 thereof.

14. The author of the Real McCoy (namely the Applicant and/or King James acting on its behalf, who arranged for it to be made) is furthermore a qualified person as contemplated in Section 3 of the Act: in that the Applicant is a company incorporated in the Republic, and so too is King James which was commissioned by the Applicant, for remuneration, to make the Real McCoy. Furthermore, the employees of King James who were involved in the making of the Real McCoy and Dean Blumberg are South African citizens, or are domiciled or resident in the Republic.

15. The Applicant accordingly owns the copyright in the Real McCoy by virtue of the provisions of Section 21(1)(c) of the Copyright Act 98 of 1978 ("the Act").

16. Consequently, in terms of Section 8(1) of the Act, Applicant has the exclusive right to do or to authorise the doing of, *inter alia*, any of the following acts in the Republic:

16.1 reproducing the Real McCoy in any manner or form, including making a still photograph therefrom;

16.2 causing the Real McCoy to be seen or heard in public;

16.3 broadcasting the Real McCoy;

- 16.4 causing the Real McCoy to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the Real McCoy, and is operated by the original broadcaster;
- 16.5 making an adaptation of the Real McCoy;
- 16.6 doing, in relation to an adaptation of the Real McCoy, any of the acts specified in paragraphs 10.1 to 10.4 above;
- 16.7 letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the Real McCoy.
17. I am advised that, because it was the Applicant who arranged for the making of the Real McCoy, *inter alia* by commissioning and remunerating King James and Blumberg to do so on its behalf, it is the Applicant which is both the owner of the copyright in the Real McCoy. However, insofar as King James and Dean Blumberg may have acquired any copyright in the Real McCoy, both have assigned any rights which they may have acquired in or to the Real McCoy to the Applicant.
18. The Real McCoy was first flighted on South African television stations on 8 May 2011 and has been continually rebroadcast since then. It signalled the launch of the Applicant's rebranding campaign in respect of which the Applicant has expended, and continues to expend, significant sums. This campaign will extend over several years and is designed to build on the distinctive brand and message embodied in the Real McCoy. In this regard I refer to the affidavit of Shihaam Abrahams of Vizeum Media (South Africa) Pty Ltd ("*Vizeum*"), the Applicant's media agency, which sets out *inter alia* the flighting history of the Real McCoy up until the end of June 2011, and the media value of this advertising.

19. In addition to the Applicant's copyright in the Real McCoy, the intensity of the campaign and the related features of supporting content and advertising by the Applicant, have since the 8th of May already established by the end of July resulting in it becoming distinctive of the Applicant and which formed an important feature of its goodwill. The advertisement has become widely recognised and well-known to the public as distinctive of the Applicant in a relatively short space of time. I commissioned a digital media company, to evaluate the success of the adverts and a 73% positive, 17% neutral and 10% negative feedback was reported. This positive response to the advert is far beyond the norms in the industry, in which a good positive response is anything above 50%.

THE YADA YADA ADVERTISEMENT

20. The Applicant discovered on the afternoon of Friday, 1 July 2011 that the Respondents had infringed the Applicant's copyright, and the First Respondent is competing unlawfully with it, by having made and flighted a cinematographic film advertising the Respondent and its products which they have published and disseminated on television and in the electronic media. I will – as set out above – call this the "*Yada Yada advertisement*". A copy thereof is included on the disc filed with the Court.
21. The Yada Yada advertisement first came to the Applicant's attention from a number of sms messages received late afternoon on Friday, 1 July 2011 from various persons who had seen it on www.youtube.com, a website which allows persons to upload videos and films which can be accessed globally. I then logged onto the website and

viewed the Yada Yada advertisement on “*Youtube*” personally. Shortly thereafter I was informed that the Yada Yada advert had also been broadcast by SABC3 at about 18h40 that evening. I thereupon contacted Shihaam Abrahams of Vizeum and asked her urgently to ascertain whether the Respondents had booked any airtime for the flighting of the Yada Yada advert over the weekend. She was able to confirm that the Respondent did have airtime booked for the weekend, and I have since ascertained that the Yada Yada advert was flighted on at least the following television stations on Friday, 1 July 2011 and/or Saturday 2 July 2011: SABC 2, SABC3, e-tv, and DSTV’s HD package. I also saw it on M-Net during the screening of Idols on 3 July 2011.

COPYRIGHT INFRINGEMENT AND UNLAWFUL COMPETITION

22. The Respondents have infringed the Applicant’s copyright in the Real McCoy by copying, reproducing and/or adapting it, without the consent or licence of the Applicant. The Second Respondent – as the First Respondent’s advertising agency – was actually responsible for the infringement in that it conceived and produced the Yada Yada advert, but it plainly did so for and on behalf of the First Respondent as its principal.
23. The flagrant copying and/or adaptation of the Real McCoy is evident from a comparison of the adverts on disc “A”, and also from still photos taken from each advert, which I attach as annexures “AG3”.
24. A comparison between the Real McCoy and the Yada Yada advert reveals the following:

- 24.1. The Real McCoy features a man walking barefoot along a stretch of Noordhoek beach from left to right; the Yada Yada advert takes place against the backdrop of either the same or a similar stretch of beach;
 - 24.2. Sir Ben Kingsley/his impersonators are dressed in a distinctive style and colour in the Real McCoy advert; the characters in the Yada Yada advert are identically dressed;
 - 24.3. The composition, grading (i.e. colour and effect – which are material features of films and advertisements) and camera angles of the shots in the adverts are virtually identical;
 - 24.4. Similar music and lighting is used in the Yada Yada advert to create the same mood as that conveyed in the Real McCoy advert.
 - 24.5. The Respondents have simply replaced the heads of Sir Ben Kingsley/Sir Ben Kingsley impersonators with talking hands which say nothing other than “Yada Yada” until the advertisement comes to a close. In all other respects it is substantially identical to the Real McCoy;
 - 24.6. An understanding of the Yada Yada advert necessitates the viewer identifying and recognizing it as a substantial reproduction and/or adaptation of the Real McCoy; otherwise it is entirely meaningless.
25. The phrase “Yada Yada” colloquially denotes an insulting and disparaging put-down of nonsense. The Yada Yada advert is targeted at the Applicant and the Real McCoy. The urban dictionary gives the explanation of the meaning of “Yada Yada” as reflected in annexure “AG4” hereto.



26. Apart from the infringement of the Applicant's copyright in the Real McCoy, the Yada Yada advert also constitutes a disparagement of the Applicant, its products, and the Real McCoy and constitutes unlawful competition. The Real McCoy advertisement draws the attention of the viewers, through the narrative of Sir Ben Kingsley and impersonators, to the need to reassess their insurance policies to ensure that they provide the cover which the policyholders envisage. The message is accordingly that Santam does provide the cover that it says it does, and that which the policy holder believes he holds. This is in accordance with the Applicant's updated slogan "Insurance. Good and Proper".
27. I annex hereto marked "AG5" a copy of the ASA Code, which is the benchmark of acceptable and unacceptable advertising and sets the industry norm. Measured against this Code, the Yada Yada advert is also entirely unacceptable.
28. The "Yada Yada" advert is one of a number of other "talking hand" advertisements which are part of the First Respondent's broader advertising campaign, which feature the slogans "*Less Yada Yada, more Ching Ching*" and "*Dial Direct. Simple Smart Insurance*". The "talking hand" characters in these adverts all have "inferior" insurance products and are portrayed as being "*all talk*" with no substance or action.
29. In replacing Sir Ben Kingsley with the "talking hand" which says nothing other than "Yada Yada", and ending the advert with the slogan. "*Less Yada Yada, more Ching Ching. Dial Direct for real Simple Smart Insurance*" the advert clearly conveys the message that what Sir Ben Kingsley is saying (and what the Applicant is conveying about its product) is drivel and should be disregarded as nonsense. This is both disparaging and untrue.



30. The Respondents have effectively hijacked the Applicant's advertising campaign by copying the Real McCoy's distinctive features as a springboard for First Respondent's benefit whilst at the same time to denigrating the Applicant, its products and the Real McCoy. The First Respondent has already derived material benefit from its unlawful actions – in only two days the “Yada Yada” has had over 41 000 views on Youtube. In comparison, the most viewed of the Respondents' other “*talking hand*” advertisements posted on Youtube have been viewed just over 900 times. In this regard I attach a print-out from the website www.youtube.com reflecting these figures as “AG6” It has also generated significant comment and debate on the social networking website www.twitter.com and in this regard I attach a print out of the current “*tweets*” concerning this advert as annexure “AG7”. It is clear from the content of the “*tweets*” that the advert is uniformly interpreted by the public as an attack on or spoof of the Applicant's Real McCoy advert. I also specifically refer to the “*tweet*” by Pepe Marais which reads “*Dial Direct's Yada kicks sand in Santam's eyes*” Pepe Marais is one of the founders and directors of Second Respondent. This clearly reflects the Respondents' deliberate intention to denigrate the Applicant's products and advert.
31. The Respondents furthermore cynically planned to flight the “*Yada Yada*” advert over the weekend in order to ensure that it would receive maximum exposure knowing that it ultimately would have to be pulled, and at a time when it would be difficult for the Applicant to make the necessary logistical arrangements to prepare and launch this application.
32. On 2 July 2011, after becoming aware of the Respondents' infringing conduct, the Applicant's legal advisor Ravi Jaga telephoned Mr Bradley du Chene, the head of

Marketing of the First Respondent, alerting him to the fact that the Applicant had become aware of the Yada Yada advert, providing him with an opportunity of immediately desisting from any further dissemination and/or flighting of the advert. Mr du Chene advised that consideration would be had to the foregoing upon receipt of a letter of demand. I refer to the confirmatory affidavit of Mr Jaga to be filed herewith.

33. The Applicant's attorneys, Werksmans Attorneys, accordingly addressed a letter of demand sent via e-mail to Mr du Chene on 2 July 2011 providing the First Respondent with an opportunity to cease all use of the Yada Yada advertisement and to instruct the broadcasters flighting the advertisement to cease the broadcasting thereof by 12h00 the following day. I attach a copy thereof as annexure "AG8"
34. After receipt of the letter of demand, Mr du Chene contacted Mr Jaga telephonically during the evening of 2 July 2011, advising that the deadline imposed by the letter of demand was not reasonable and that the First Respondent would not be complying therewith. Mr du Chene confirmed this in an e-mail to the Applicant's attorney, Janine Hollesen of Werksmans Attorneys, on 3 July 2011 at 10h30, a copy of which is attached as annexure "AG9". An hour later Ms Hollesen received a substantive response from Mr Chene recording the First Respondent's stance in respect of the demand made by the Applicant, a copy of which is attached as annexure "AG10". In summary, the Respondent denies the infringement of the Applicant's copyright, refuses to accede to the demands made by the Applicant or to provide any undertaking to cease the use of the Yada Yada advertisement. For the sake of completeness, I attach Ms Hollesen's reply to Mr Chene's e-mail as annexure "AG11".



URGENCY

35. It is extremely urgent that the Respondents be interdicted from continuing with their infringing and unlawful conduct. In a mere two days, the Yada Yada advert has been viewed on the internet by more than 41 000 viewers; scores of television viewers would have seen the advert over the weekend. These numbers will increase exponentially if the Respondents are not interdicted as sought.
36. The Respondents have infringed the Applicant's copyright in order to extract an unfair competitive advantage and to undermine and damage the Applicant's campaign and products. This conduct is continuing. The Applicant cannot be afforded redress at a hearing in the ordinary course, as by that stage the harm caused to its advertising campaign, its products and services would be irreversible, and the Respondents would have achieved its objective of saturating the media with their infringing work.
37. The damage which is being caused to the Applicant as a result of the Respondents conduct is virtually unquantifiable. An urgent interdict is practically the only effective remedy available to the Applicant in the circumstances. The Applicant has furthermore provided the First Respondent with an opportunity to cease its unlawful conduct, to no avail. Indeed, the First Respondent has now unequivocally indicated that it will not be acceding to the Applicant's demands. Since the Second Respondent was the author of the infringing work and unlawful conduct – clearly with the intention of advantaging the First Respondent and denigrating the Applicant – it is a joint wrongdoer.

THE BALANCE OF CONVENIENCE

38. Insofar as it may be relevant, it is submitted that the balance of convenience favours the Applicant in relation to the granting of the interim relief sought herein.
39. It is plain that the Yada Yada advertisement was a reaction to the successful Real McCoy advertisement. It cannot therefore be regarded as a legitimate part of the Respondent's own advertising campaign. Should the broadcast and dissemination of the Yada Yada advertisement be restrained on an interim basis, any reserved slots which might otherwise have been used to broadcast it on television or other media can be filled by any one of the range of other advertisements currently being flighted by the Respondent. Consequently, it will suffer no material damage. In any event, as indicated above, it is believed that Respondent knew from the outset that the Yada Yada advert constituted unlawful competition and an infringement of copyright, and knew full well that as soon as it had an opportunity to do so the Applicant would successfully prevent its publication. It was for this reason, Applicant believes, that the entire campaign was launched on a Friday in the knowledge that it will be virtually impossible to obtain any form of Court order or other relief before the following week.
40. The Applicant, on the other hand, has and will continue to suffer irreparable harm if the Yada Yada advertisement continues to be flighted and published, and this prejudice will effect, even if the Applicant is in due course able to obtain final relief. As I have indicated above an entire long-term advertising campaign and rebranding exercise has been formulated at the actual and anticipated costs of many millions of



rand: the Real McCoy advertisement is an integral part and indeed the foundation phase of this. The dilution and denigration of the Applicant, its product, and the Real McCoy which is the calculated result of the Yada Yada advertisement seriously erodes this campaign and the goodwill which it would otherwise generate.

CONCLUSION

41. In the premises, I respectfully request an order in terms of the notice of motion to which this affidavit is annexed.



ANEL GROBLER

I certify that this affidavit was signed and sworn to before me at *Cape Town*, on this the *6th* day of July 2011 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name:

WEGE VAN NIEKERK
ADVOCATE OF THE
HIGH COURT OF SOUTH AFRICA
HUGUENOT CHAMBERS
QUEEN VICTORIA STREET
CAPE TOWN

Address:

Capacity

RESOLVED THAT:

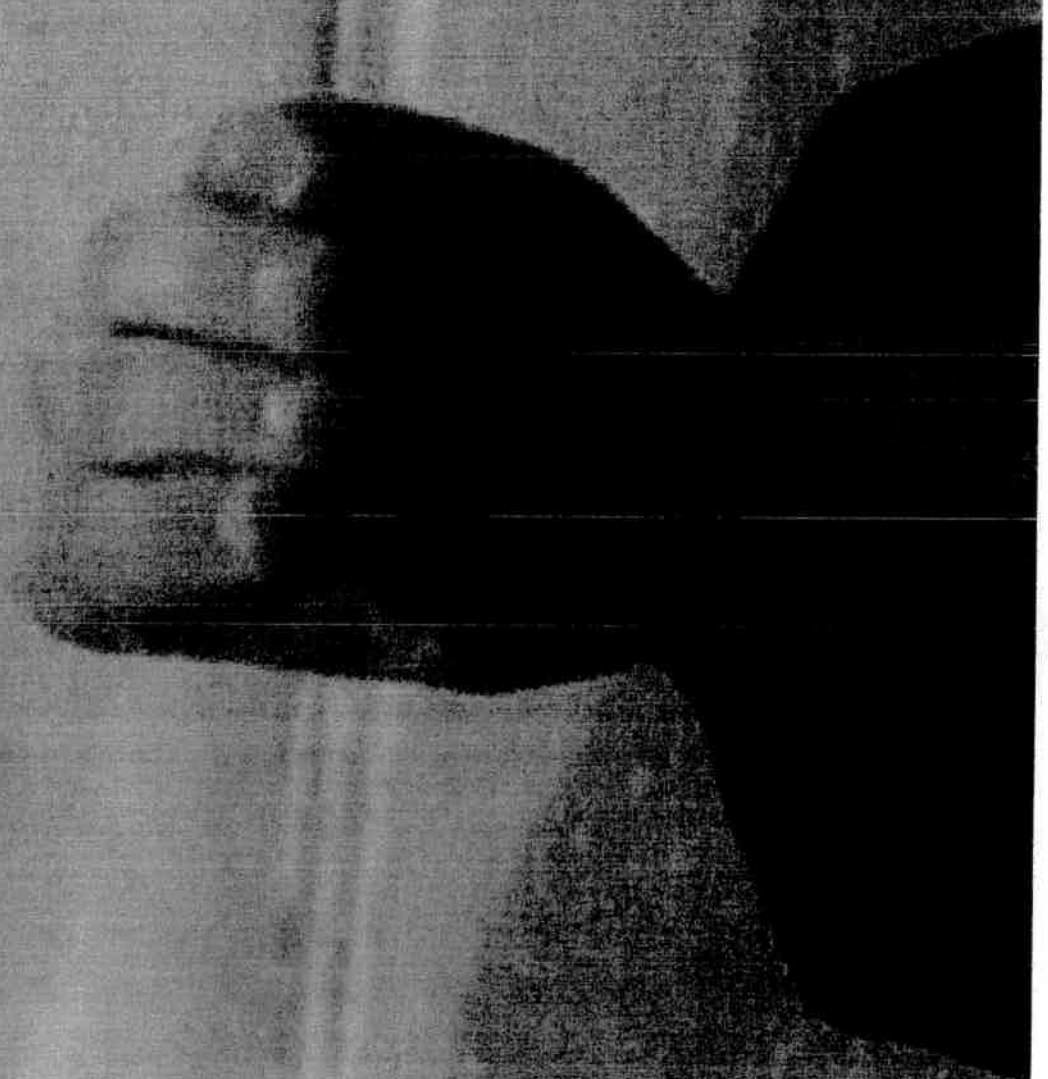
- 1 The company institute proceedings as the Applicant in the division of the High Court of South Africa having jurisdiction, against Dial Direct Insurance Limited ("Dial Direct") for an order interdicting and restraining Dial Direct's copyright infringement and unlawful competition in relation to the company's Real McCoy advertisement and to claim such further and / or alternative relief with regard to such unlawful conduct.
- 2 Anel Grobler and /or Ravi Jaga are hereby authorised to launch the application for the requisite relief and to depose to any affidavits necessary and to do all other things whatsoever required to be done on behalf of the company in such proceedings which authority includes a delegation of such powers.
- 3 All action already taken on behalf of the company in relation to matters relevant to the proceedings aforementioned is ratified insofar as needs be.


.....
MJ. RÉYNEKE
CHIEF FINANCIAL OFFICER & EXECUTIVE DIRECTOR

AG

"AG 3-1"

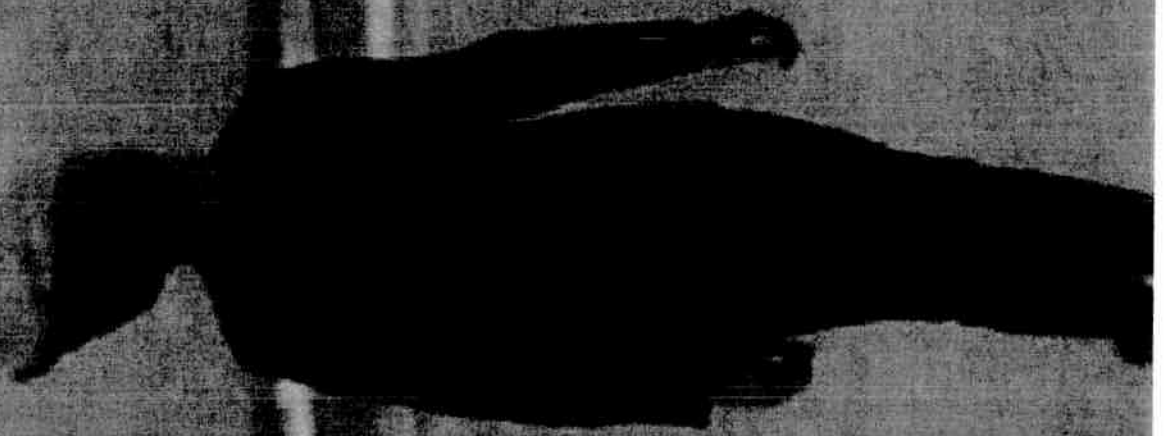
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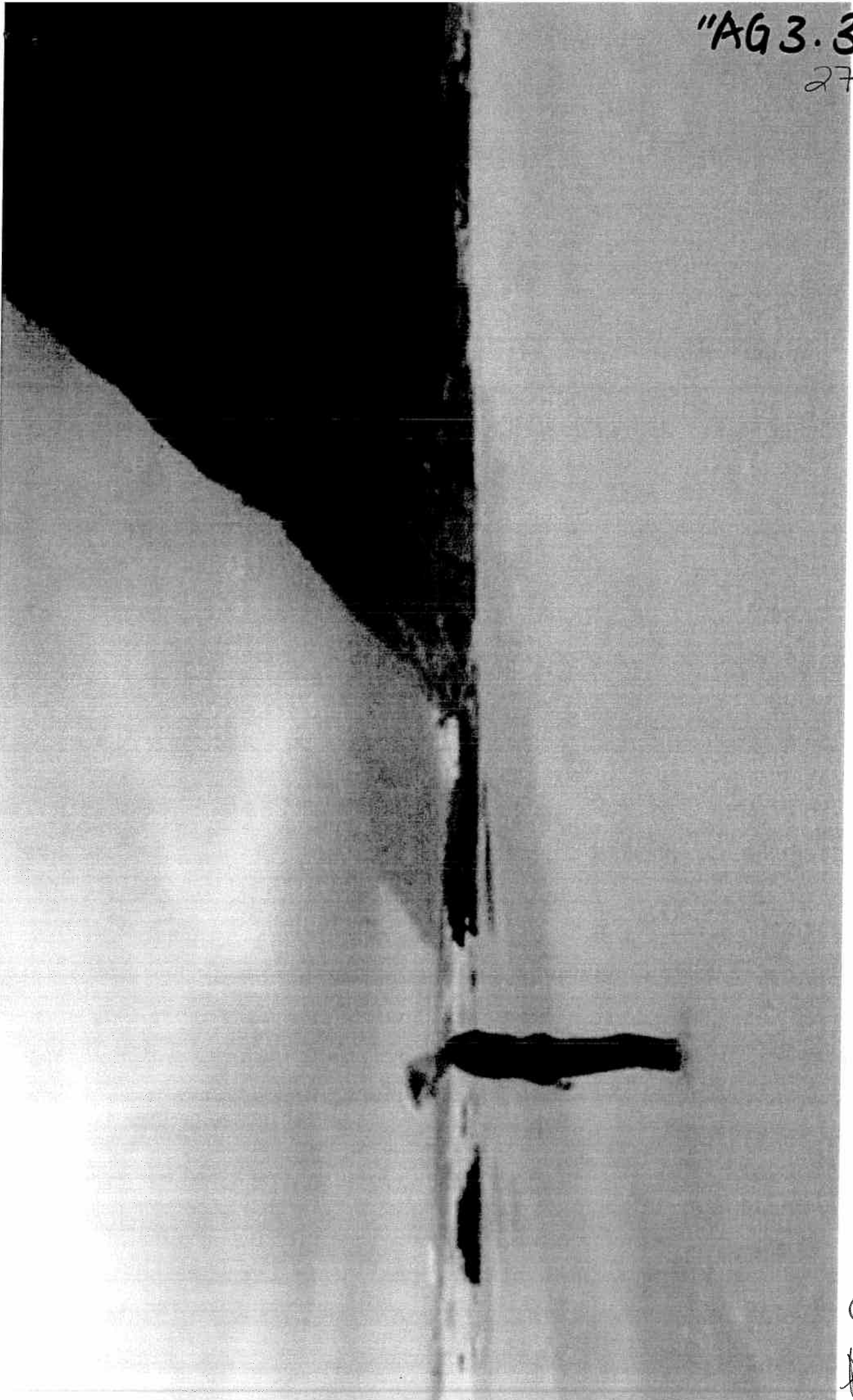
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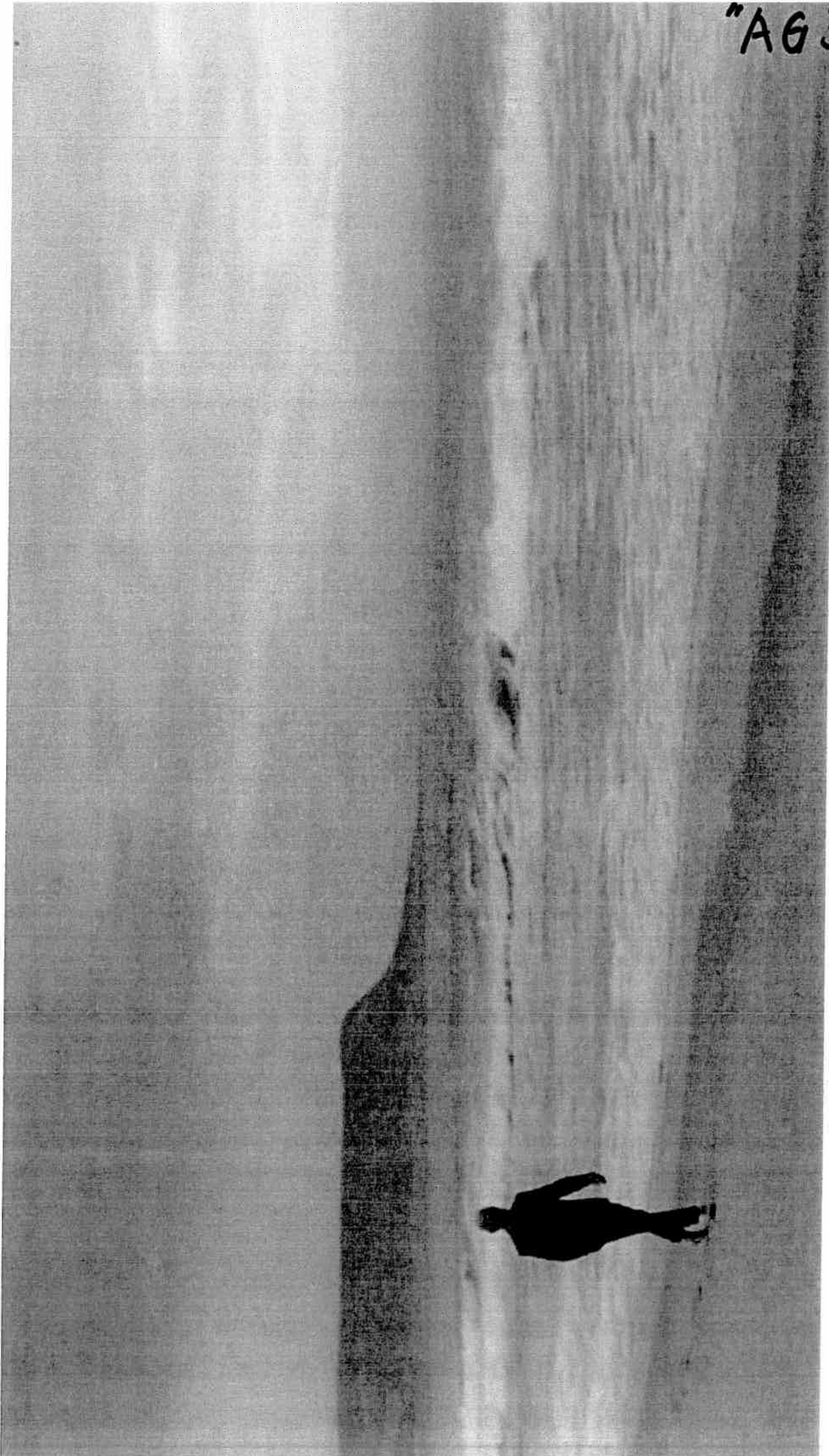
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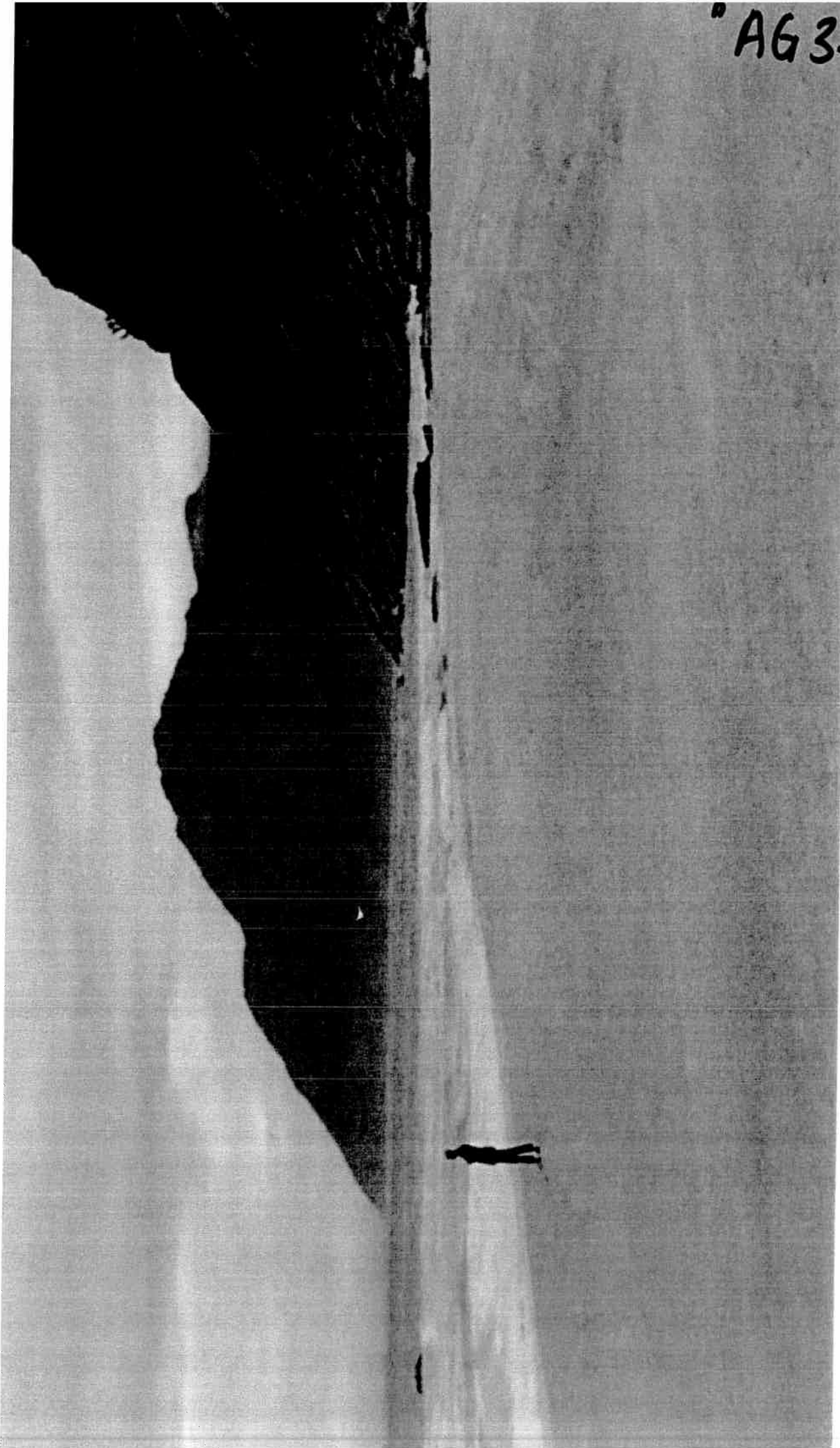
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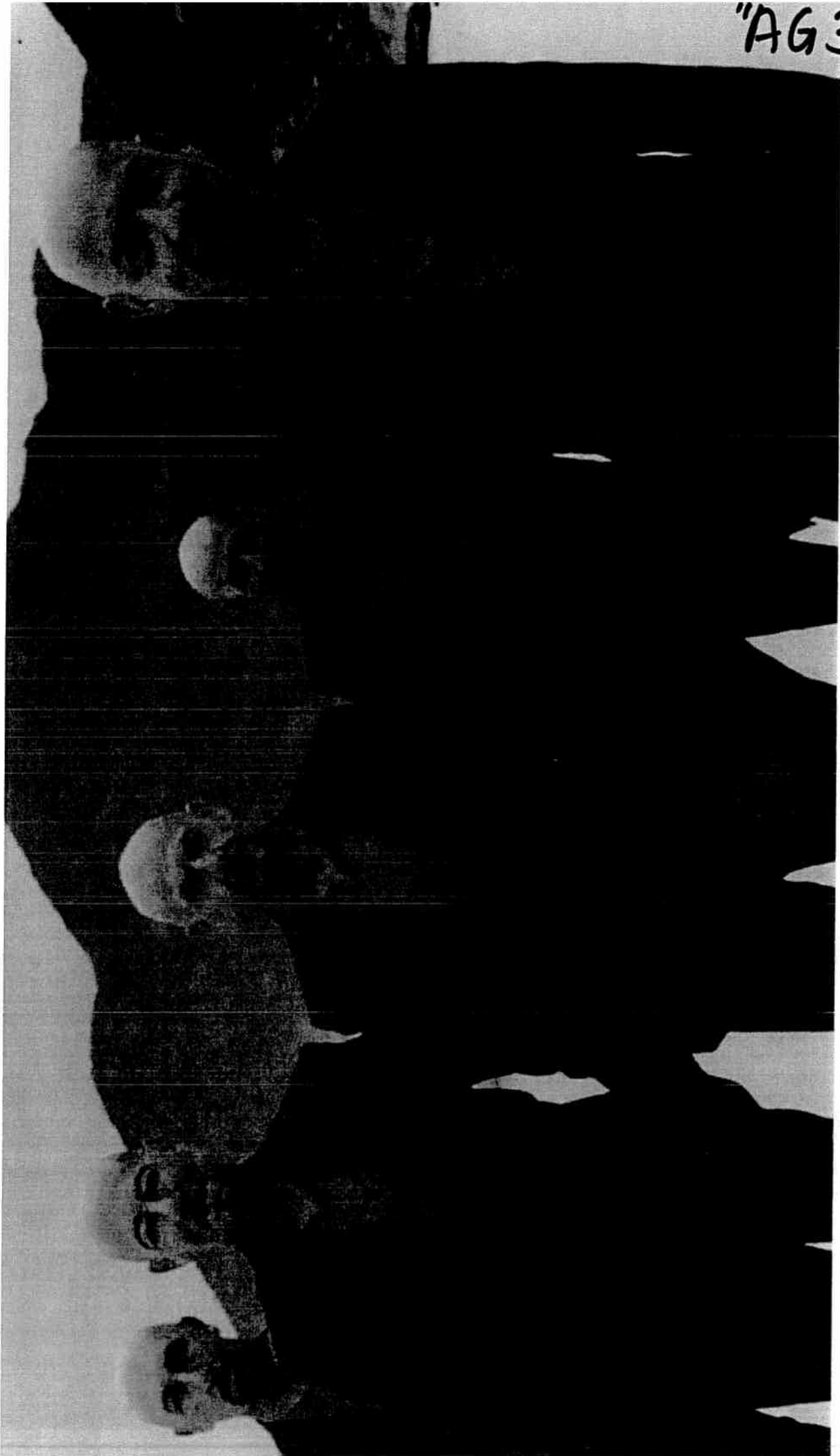
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Urban Dictionary: yada yada - Synonyms, Antonyms, Internet Explorer

http://www.urbandictionary.com/define.php?term=yada+yada

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Urban Dictionary: Yada yada

Look up anything, like your friends!

Yada yada

word of the day names dictionary sounds my city store add edit blog

word: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z # New

Yada yada [add example](#) [add definition](#) [add pronunciation](#) [add translation](#) [add video](#) [add audio](#) [add image](#)

1. yada yada banana flannigans **39 up, 22 down**
 another way to insult or tell someone to shut the fuck up. while mid-sentences someone must yell "yada yada banana flannigans."
Kid: hey i was chillin' with my...
Me: YADA YADA BANANA FLANNIGANS!
Kid: dude...
Me: ya you have just been banana flanniganed
[add example](#) [add definition](#) [add pronunciation](#) [add translation](#) [add video](#) [add audio](#) [add image](#)
 by [Mr. Yada yada](#) Apr 12, 2005 [share this](#)

2. yada **56 up, 23 down**
 The saying Yada Yada made popular by the Seinfeld show probably either originates from the Hebrew word yada "to know" or yadah "to reverse or worship with extended hands".
 Source: Strongs Concordance, Hebrew and Chaldee Dictionary of the Old Testament. 3034, 3035

Urban **DICTIONARY**

Yabov
 YACS
 yacsmid
 YACSP
 YACSP
 YACT
 Yactaria
 Yacub 7 Ali
 Yacumkah
 Yacuntya
 yacuntya
 Yacobe
 YAD
 yod b yad
 yada
 Yada Mean

Yada yada
 yada yada banana flannigans
 Yada yada yada
 Yada, Yada, Yada
 yada, yada, yada, yada
 yada
yadada
 yadada boo boo
 yadada doo doo
 yadada mean?
 yadadabamboo
 Yadadababoo

THE FASTEST EASIEST

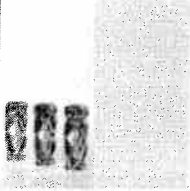
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KEYWORD SEARCH:

"AG5"



code of practice

Contents

[about us](#)

[advertising code](#)

[sponsorship code](#)

[complaints](#)

[consumer code](#)

[e-complaint](#)

[recent rulings](#)

[ad library](#)

[annual report](#)

[statistics](#)

[international ties](#)

[general links](#)

[contact details](#)

[ad-alerts](#)

[Upcoming final](#)

[appeals](#)

[ASA Precedent Manual](#)

[ASA Radio Show](#)

[code review](#)

- Preface
- [Section I - Introduction](#)
- [Section II - General](#)
- [Section III - Categories](#)
- [Section IV - Marketing Practices](#)
- [Section V - Style](#)
- [Appendices](#)
- [Guidelines](#)
- [Procedural Guide](#)

Rules and Procedures

The Code of Advertising Practice is the guiding document of the ASA. The Code is based upon the International Code of Advertising Practice, prepared by the International Chamber of Commerce. This is internationally accepted as the basis for domestic systems of self-regulation. It forms the foundation of this Code in which the basic principles laid down in the International Code are related to the particular circumstances of advertising in South Africa. The Code is drawn up by the ASA with the participation of representatives of the marketing communications industry, and is amended from time to time to meet the changing needs both of the industry and of our society.

This Code is supplemented by individual codes, which are determined by the various member organisations or negotiated with governmental institutions. These individual codes are reflected in the Appendices to the Code. All such codes conform to the general principles laid down by this Code and differ only in detail where the individual needs are to be met.

A hard copy of the Code, which is available in a loose leaf binder, may be obtained from LexisNexis Butterworths.



[about us](#) | [advertising code](#) | [sponsorship code](#) | [complaints](#) | [consumer code](#) | [e-complaint](#) | [recent rulings](#) | [ad library](#) | [annual report](#) | [statistics](#) | [international ties](#) | [general links](#) | [contact details](#) | [ad-alerts](#) | [Upcoming final appeals](#) | [ASA Precedent Manual](#) | [ASA Radio Show](#) | [code review](#) |

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about us

advertising code

sponsorship code

complaints

consumer code

e-complaint

recent rulings

ad library

annual report

statistics

international ties

general links

contact details

ad-alerts

Upcoming final

appeals

ASA Precedent
Manual

ASA Radio Show

code review

section i - introduction

1. Preamble

Note: This clause is for introductory purpose only and in terms of which complaints can not be lodged.

1.1 All advertisements should be legal, decent, honest and truthful.

1.2 All advertisements should be prepared with a sense of responsibility to the consumer.

1.3 All advertisements should conform to the principles of fair competition in business.

1.4 No advertisement should bring advertising into disrepute or reduce confidence in advertising as a service to industry and to the public.

2. Scope

2.1 Commercial advertising

The primary object of this Code is the regulation of commercial advertising, it applies therefore (except as expressly provided further on) to all advertisements for the supply of goods or services or the provision of facilities by way of trade, and also to advertisements other than those for specific products which are placed in the course of trade by or on behalf of any trader.

2.2 Non-commercial advertising

In addition the Code applies, so far as is appropriate, to advertisements by government departments and agencies and to those by other non-commercial organisations and individuals.

2.3 Political advertising

The provisions of paragraphs 2.1 and 2.2 above shall not be interpreted to bring political advertisements into the sphere of the ASA's functions. As in the case of any advertisement the individual medium shall determine whether any political advertisement presented to it is acceptable.

2.4 Controversial subjects/Advocacy advertising

To the extent that any advertisement:

- Expresses an opinion on a matter which is the subject of controversy; and
- That controversy involves issues within the areas, broadly defined, of public policy and practice, then that opinion shall not be subject to the provisions of the Code relating to misleading claims except that-

All advertisements which contain such controversial statements should:

- be readily recognisable as advertisements;
- cause no confusion as to the identity or status of advertiser;
- Whenever such information is not readily available state the advertiser's address and telephone number.

3. Interpretation

3.1 This Code is to be applied in the spirit, as well as in the letter.

3.2 In assessing an advertisement's conformity to the terms of this Code, the primary test applied will be that of the probable impact of the advertisement as a whole upon those who are likely to see or hear it. Due regard will be paid to each part of its contents, visual and aural, and to the nature of the medium through which it is conveyed.

3.3 In assessing the impact of an advertisement, the ASA may consider, *inter alia* -

3.3.1 the surrounding circumstances; and

3.3.2 that the language used in the advertisement as a whole may justify departure from the literal meaning thereof.

3.3.3 survey data, conforming to the requirements of Clause 4.1 of Section II, indicating the probable impact as a whole upon those who are likely to see or hear it.

3.4 The ASA will consider public sensitivity and social concern in interpreting



advertising.

3.5 In advertising aimed at, featuring or likely to influence children, it should be realised that because of the credulity and lack of experience of a child, the interpretation of the Code as embodied in Section I. Clause 3 will be interpreted narrowly, as children would be likely to attach a more literal meaning to advertising.

In the interpretation of this Clause, the word "children" will also include "young people".

3.6 When objections in respect of advertisements that were amended resulting from an ASA ruling are received, both the original and amended version will be taken into consideration.

3.7 Where the overall impression of the advertisement as a whole is in doubt, the ASA may, at the cost of the advertiser concerned, call for a consumer reaction test by independent research, acceptable to the ASA.

3.8 The Code binds advertiser, advertising practitioner and media owner, but the principal responsibility for observing its terms lies with the advertising practitioner when the services of a practitioner are retained.

3.9 In determining whether an advertisement is in breach of the provisions of the Code, it is not the quantity of complaints that is determinative, but the validity of the complaints.

3.10 The Code gives effect and is subject to the Constitution of the Republic of South Africa 1996.

4. Definitions

In this Code, unless the context otherwise indicates –

4.1 "advertisement" means any visual or aural communication, representation, reference or notification of any kind –

4.1.1 which is intended to promote the sale, leasing or use of any goods or services; or

4.1.2 which appeals for or promotes the support of any cause.

Promotional content of display material, menus, labels, and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received.

The word "advertisement" applies to published advertising wherever it may appear. It does not apply to editorial or programming publicity.

4.2 "Advertising Standards Authority" or "ASA" means the Advertising Standards Authority of South Africa, a section 21 company registered according to the company laws of South Africa, which carries on business as a voluntary regulatory body in the advertising industry. "ASA" includes the Directorate, Advertising Standards Committee, Advertising Industry Tribunal and Final Appeal Committee.

4.3 "Advertising Standards Committee" means the committee adjudicating on consumer complaints.

4.4 "Advertising Industry Tribunal" means the committee adjudicating on competitor complaints.

4.5 "Appeal"

4.5.1 "Appeal" means an appeal against a ruling of the ASA Directorate, Advertising Standards Committee or Advertising Industry Tribunal.

4.5.2 "First Appeal" means an appeal against a ruling made by the ASA Directorate.

4.5.3 "Final Appeal" means an appeal against a ruling made by the Advertising Standards Committee or Advertising Industry Tribunal.

4.6 "Appeal Committee" means the committee adjudicating on appeals against rulings from the Advertising Standards Committee and Advertising Industry Tribunal.

4.7 "Advertiser" means the entity, commercial or otherwise, at whose instance the advertising appears.

4.8 "ASA Committees/Committees" collectively describes the Advertising Standards Committee, the Advertising Industry Tribunal, and the Appeal Committee.

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4.9 "Broadcast medium" means the holder of a broadcasting licence granted within the meaning of the Electronic Communications Act No. 36 of 2005.

4.10 "Children" means persons who are under the age of 18, or who are portrayed as, or who appear to be, under the age of 18.

4.11 "The Code" means the Code of Advertising Practice of the ASA, as amended by the ASA from time to time, and includes all appendices to the Code and the Procedural Guide.

4.12 "Competitor complaints" means complaints lodged by, or on behalf of, a commercial entity or individual with a commercial interest concerning compliance with the Code by another commercial entity.

4.13 "Consumer" refers to any person who is likely to be reached by or exposed to an advertisement. This includes an end consumer, user or trade customer.

4.14 "Consumer complaints" means complaints lodged by members of the public or by entities or organizations regarding consumer related matters, concerning compliance with the Code by an advertisement or advertiser.

4.15 "Day" means any day but excludes Saturdays, Sundays and national holidays as well as the period from 25 December to 1 January, and in the calculation of a period of days as prescribed by the Code or as determined by the ASA, day will have this prescribed meaning.

4.16 "The Directorate" means the Executive Director and the executive staff of the ASA, acting individually or collectively.

4.17 "Discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –

- imposes burdens, obligations or disadvantage on; or
- withholds benefits, opportunities or advantages from;
- any person on one or more of the following grounds:
 - race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, or
 - any other analogous ground;

and "discriminate" and "discriminatory" shall have corresponding meanings.

4.18 "Electronic media" means advertising published by way of electronic means, and includes, *inter alia*, broadcast media.

4.19 "Gender stereotyping" means advertising that portrays a person or persons of a certain gender in a manner that exploits, objectifies or demeans.

4.20 "Manufacturer" means an entity manufacturing tangible consumer goods, be it fast moving package goods, durables, nondurables, or industrial goods, which are marketed to consumers.

4.21 "Members" means the organizations, institutions and entities that are members of the ASA in good standing at any given time. Clause 3 of the Preface to the Code contains a list of members of the ASA. An organization, institution or entity that has joined the ASA but that has not yet been included in Clause 3 shall, nevertheless, be considered to be a member. If the membership of an organization, institution or entity has been terminated for any reason, that body shall not be a member notwithstanding the fact that its name may not yet have been removed from Clause 3.

4.22 "Negative Gender Portrayal" means advertising that portrays a person or persons of a certain gender in a manner that restricts and entrenches the role of persons of such gender in society or sections of society.

4.23 "Product" includes goods, services, activities and facilities.

4.24 "Retailer" means an entity carrying manufacturers' goods, and acts as an intermediary between the public and manufacturers

4.25 "Scientific substantiation" means substantiation based on statistically valid data, employing a validated, proven scientific method and applicable to the claim being made.

5. Confidentiality

The ASA will make available to any person requesting same all records, documents and other information in its possession, subject to what is set out below.

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5.1 The ASA will refuse to disclose any record, document or other information, whether in respect of its own proceedings or otherwise in its possession, where such record, document or information contains:

5.1.1 trade secrets of a third party;

5.1.2 financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

5.1.3 information supplied in confidence by a third party, the disclosure of which could reasonably be expected –

(a) to put that third party at a disadvantage in contractual or other negotiations; or

(b) to prejudice that third party in commercial competition.

5.2 The ASA will refuse a request for access to a record, document or other information if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

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[about us](#)
[advertising code](#)
[sponsorship code](#)
[complaints](#)
[consumer code](#)
[e-complaint](#)
[recent rulings](#)
[ad library](#)
[annual report](#)
[statistics](#)
[international ties](#)
[general links](#)
[contact details](#)
[ad-alerts](#)
[Upcoming final appeals](#)
[ASA Precedent Manual](#)
[ASA Radio Show](#)
[code review](#)

section ii - general

Section II

General principles

1. Offensive advertising

1.1 No advertising may offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

1.2 Advertisements should contain nothing that is likely to cause serious or wide-spread or sectoral offence. The fact that a particular product, service or advertisement may be offensive to some is not in itself sufficient grounds for upholding an objection to an advertisement for that product or service. In considering whether an advertisement is offensive, consideration will be given, *inter alia*, to the context, medium, likely audience, the nature of the product or service, prevailing standards, degree of social concern, and public interest.

2. Honesty

Advertisements should not be so framed as to abuse the trust of the consumer or exploit his lack of experience or knowledge or his credulity.

3. Unacceptable advertising

3.1 *Fear*

Advertisements should not without justifiable reason play on fear.

3.2 *Violence*

Advertisements should not contain anything which might lead or lend support to acts of violence, including gender-based violence, nor should they appear to condone such acts.

3.3 *Legality*

Advertisements should not contain anything which might lead or lend support to criminal or illegal activities, nor should they appear to condone such activities.

3.4 *Discrimination*

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.

Refer to Section I, Clause 4.17.

3.5 *Gender*



Gender stereotyping or negative gender portrayal shall not be permitted in advertising, unless in the opinion of the ASA, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

4. Truthful presentation

4.1. Substantiation

4.1.1 Before advertising is published, advertisers shall hold in their possession documentary evidence as set out in Clause 4.1, to support all claims, whether direct or implied, that are capable of objective substantiation.

4.1.2 Documentary evidence, whether in the form of survey data or any other documentation, shall be up to date and current, and shall have market relevance.

4.1.3 Survey data submitted as documentary evidence shall conform to the following:

4.1.3.1 The survey shall emanate from an entity approved by, or acceptable to, the Southern African Market Research Association, and

4.1.3.2 The accuracy of the claims based on the survey shall be confirmed by an entity approved by, or acceptable to, the South African Market Research Association.

4.1.3.3 Where the survey does not meet the requirements of either clause 4.1.3.1 or clause 4.1.3.2, such survey shall be evaluated by the South African Marketing Research Association to confirm the accuracy of the claims based on the survey. The advertiser shall bear the costs of such evaluation.

4.1.3.4 In commissioning survey research, it is strongly recommended that Guideline 6 be consulted.

4.1.4 Documentary evidence, other than survey data, shall emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the particular field to which the claims relate and be acceptable to the ASA.

4.1.5 Before making a ruling on documentary evidence, the ASA will be entitled to:

4.1.5.1 Require the advertiser to engage the services of a person/entity which is independent, credible, and an expert in the particular field to which the claims relate, to confirm the accuracy of the claims, when, at the discretion of the ASA, the documentary evidence is of such a nature that assistance is required to confirm the accuracy of the claims. The reasonable fees incurred in relation thereto will be at the cost of the advertiser, and the advertiser will be required to deposit the fee with the ASA beforehand.

4.1.5.2 Require the advertiser, at the discretion of the ASA, to submit supporting documentation in order to determine the independence, credibility and expertise of the persons/entities from which the documentary evidence emanates.

4.1.6 Claims based on research conducted by publications must clearly state the source in advertising.

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4.1.7 It is specifically noted that the Directorate may consider new substantiation submitted after a ruling has been made by the ASA rejecting substantiation or upholding a complaint based on substantiation.

4.1.8 Once a ruling has been made by the ASA accepting substantiation, the complainant may either:

4.1.8.1 appeal against the acceptance in the ruling on the evidence in terms of clause 4.1 of Section II; or

4.1.8.2 call for arbitration in terms of clause 16 of the Procedural Guide.

4.2 Claims

4.2.1 Misleading claims

Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.

4.2.2 Puffery

Value judgments, matters of opinion or subjective assessments are permissible provided that:

- it is clear what is being expressed is an opinion;
- there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

The guiding principle is that puffery is true when an expression of opinion, but false when viewed as an expression of fact.

4.2.3 Hyperbole

Obvious untruths, harmless parody or exaggerations, intended to catch the eye or to amuse, are permissible provided that they are clearly to be seen as humorous or hyperbolic and are not likely to be understood as making literal claims for the advertised product.

4.2.4 Expert opinion

Where informed opinion is claimed in support of a product, such opinion must be substantiated by independent evidence.

4.2.5 Statistics and scientific information

Advertisements should not misuse research results or quotations from technical and scientific literature. Statistics should not be so presented as to imply that they have a greater validity than is the case. Scientific terms should not be misused, and scientific jargon and irrelevancies should not be used to make claims appear to have a scientific basis they do not possess.

4.2.6 Headlines

Headlines to advertising should not mislead in any way and it shall not be acceptable to contend that a misleading impression conveyed by a headline has been corrected in the body copy of the advertisement.

When a statement contained in a headline of printed advertising is

asterisked to refer to an explanatory footnote, the type-size used in the footnote shall not be smaller than that used in the substantive copy of the advertisement.

4.2.7 Truthful presentation

Where material information is superimposed on screen, the print shall be clearly visible and remain on screen long enough to be easily read by the hypothetical reasonable viewer.

4.3 *The value of goods*

4.3.1 So far as is relevant, the following provisions apply to claims as to the value of services or facilities offered by way of advertisements as well as to the value of goods:

4.3.1.1 Consumers should not be led to overestimate the value of goods whether by exaggeration or through unrealistic comparisons with other goods or other prices.

4.3.1.2 The advertiser should be ready to substantiate any claim he makes as to the value in cash terms of goods offered by him at a lower price or free; and any saving to the consumer claimed to result from the offer of goods at a price lower than their actual value.

4.4 *Use of the word "free"*

4.4.1 Products should not be described as "free" where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.

4.4.2 Where a claim is made that, if one product is purchased, another product will be provided "free", the advertiser should be able to show that he will not be able immediately and directly to recover the cost of supplying the "free" product whether in whole or in part.

4.4.3 In particular, advertisers should in these circumstances make no attempt to recover the cost to them of the product by such methods as the imposition of packaging and handling charges, the inflation of the true cost of delivery, freight or postage, an increase in the usual price of the product with which the "free" product is offered, a reduction in its quality, or otherwise.

4.4.4 A trial may be described as "free", although the consumer is expected to pay the cost of returning the goods, provided that the advertiser has made clear his obligation to do so.

4.4.5 Advertisements offering "free" goods shall indicate that such goods are only received subject to purchase.

4.5 *"Up to ..." and "from ..." claims*

4.5.1 Claims, whether as to prices or performance, which use formulas such as "up to 10 kilometers per liter" or "prices from as low as R5" are not acceptable where there is a likelihood of the consumer being misled as to the availability of the benefits offered. Such claims should not be used—

4.5.1.1 where the price or other advantage claimed bears no relation to the prevailing level of prices or benefits, and in particular where it does not apply to the goods or services actually advertised or to more than an

insignificant proportion of them;

4.5.1.2 where they apply only to spoiled or imperfect goods, or to goods or services which are in some respect less complete or subject to greater limitations than the bulk of those on offer.

4.6 *Direct supply*

4.6.1 Except in the case of a manufacturer who distributes to the public directly, claims that goods are available "direct from the manufacturer" and the like are not acceptable where the advertiser cannot substantiate the implication that the consumer will benefit, in terms of cash or otherwise, from the elimination of one stage or more in the normal process of distribution.

4.7 *Wholesale*

No advertisement should state or imply that goods offered for retail sale are being offered at wholesale prices unless the advertiser can prove that the prices in question are not higher than those at which goods are currently sold to retailers or other classes of trade buyers.

4.8 *Fresh*

The word "fresh" must not be used in advertising in such a manner as to mislead or confuse the consumer.

5. **Price comparisons**

5.1 *By manufacturers*

An advertiser may wish to claim that his prices are lower than those of his competitors. Such claims are generally acceptable subject to the provisions of clause 7 Section II of the Code.

5.2 *Co-operative advertising*

Where a manufacturer inserts the name of a retailer the advertisement will be deemed to be a "retail" advertisement and not that of a manufacturer and will need to comply with the conditions below governing retail advertisements.

5.3 *By retailers*

Retailers will be permitted to quote price comparisons/or specific discounts in advertising provided that the following conditions are complied with--

5.3.1 Satisfactory documentary evidence of the price reduction is held available and can be provided on request.

5.3.2 A single price reduction or discount may be advertised for a maximum period of three months.

5.4 *Sale advertising*

Special sale prices may be advertised on the understanding that--

5.4.1 Sale advertising with price comparisons will be restricted to a maximum of one period of three weeks per calendar quarter, and with a minimum of two months between any two sale campaigns for the same advertiser.

5.4.2 Satisfactory documentary evidence of all the claimed price reductions is held available to be furnished on request.

5.5 Corporate slogans

The provisions of Clauses 5.1 to 5.4 will not apply to corporate slogans, themes, statements, etc relating to pricing.

6. Disparagement

6.1 Advertisements should not attack, discredit or disparage other products, services, advertisers or advertisements directly or indirectly.

6.2 Comparisons highlighting a weakness in an industry or product will not necessarily be regarded as disparaging when the information is factual and in the public interest.

6.3 In considering complaints under this Clause, the ASA shall take cognisance of what it considers to be the intention of the advertiser.

7. Comparative advertising

7.1 Advertisements in which factual comparisons are made between products and/or services are permitted provided that—

7.1.1 all legal requirements are adhered to. Attention is drawn to the provisions of the Trade Marks Act 194 of 1993:

7.1.2 only facts capable of substantiation are used as governed by Section II Clause 4.1;

7.1.3 one or more material, relevant, objectively determinable and verifiable claims are made;

7.1.4 the claims are not misleading or confusing as governed by Section II Clause 4.2;

7.1.5 no infringement of advertising goodwill takes place as governed by Section II Clause 8;

7.1.6 no disparagement takes place as governed by Section II Clause 6;

7.1.7 the facts or criteria used are fairly chosen. In this assessment the following will, inter alia, be taken into account—

- the significance of the facts or criteria used;
- the relevance and representativeness of the facts or criteria used; and
- whether the basis of the comparison is the same.

7.1.8 products or services compared must have the same or similar characteristics and must be intended for the same, or similar, purpose;

7.1.9 the contextual implication be strictly limited to the facts;

7.1.10 where claims are based on substantiated research, the express consent as to the accuracy and scope of such claims be obtained from the relevant research body;

7.1.11 the advertiser accepts responsibility for the accuracy of the research and claims.

7.2 It should be noted that reference to claims above shall be deemed to include all visuals and aural representations.

7.3 Group comparisons and comparisons which identify competitors by implication are acceptable subject to the criteria contained in this clause.

7.4 The guiding principle in all comparisons shall be that products and/or services should be promoted on their own merits and not on the demerits of competitive products.

7.5 In considering matters raised under this clause, cognisance will be taken of the intention of the advertiser.

7.6 It is strongly recommended that advertisers obtain advice regarding the conformity of advertising material with all the provisions of clause 7 especially the Trade Marks Act before placing a comparative advertisement.

8. Exploitation of advertising goodwill

8.1 Advertisements may not take advantage of the advertising goodwill relating to the trade name or symbol of the product or service of another, or advertising goodwill relating to another party's advertising campaign or advertising property, unless the prior written permission of the proprietor of the advertising goodwill has been obtained.

Such permission shall not be considered to be a waiver of the provisions of other clauses of the Code.

8.2 Parodies, the intention of which is primarily to amuse and which are not likely to affect adversely the advertising goodwill of another advertiser to a material extent, will not be regarded as falling within the prohibition of paragraph 8.1 above.

In considering matters raised under this clause consideration will be given to, *inter alia*, the likelihood of confusion, deception and the diminution of advertising goodwill. Furthermore, whether the device or concept constitutes the "signature" of the product or service, is consistently used, expended throughout media and is prominent in the mind of the consumer.

9. Imitation

9.1 An advertiser should not copy an existing advertisement, local or international, or any part thereof in a manner that is recognisable or clearly evokes the existing concept and which may result in the likely loss of potential advertising value. This will apply notwithstanding the fact that there is no likelihood of confusion or deception or that the existing concept has not been generally exposed.

9.2 The provisions of Clause 9.1 above shall apply for a period of two years from the date of last usage of the advertising, packaging or labelling concerned.

In considering whether or not an infringement has taken place consideration will be given to, *inter alia*, the extent of exposure, period of usage and advertising spend, whether the concept is central to the theme, distinctive or crafted as opposed to in common use. Furthermore the competitive sphere will also be taken into account.

In considering international campaigns, consideration will be given to, *inter alia*, the undue imitation thereof by local advertisers. This, however,

will only apply if the advertiser is committed to start trading in the local market within a reasonable period of time.

10. Testimonials

10.1 To be genuine

Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it. Testimonials or endorsements which are obsolete or otherwise no longer applicable (eg where there has been a significant change in formulation of the product concerned) should not be used.

10.2 Conformance to the Code

Testimonials themselves should not contain any statement or implication contravening the provisions of this Code and should not be used in a manner likely to mislead.

10.3 Efficacy claims

Testimonials should not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed should be fairly presented. Where "before" and "after" claims are made, they should be capable of substantiation, expressed and illustrated in such a way as to permit a fair comparison to be made.

10.4 Amendment

Where any testimonial contains an expression which conflicts with this Code, the advertiser may, with the written approval of the person giving the testimonial, amend it so as to remove the source of conflict.

10.5 Foreign residents

Testimonials from persons resident outside South Africa are not acceptable unless their address and/or country of residence are given to the ASA or the medium involved which may decide whether such details must be used in the advertisement.

10.6 Fictitious characters

Particular care should be taken to ensure that advertisements based on fictitious characters are not so framed as to give the impression that real people are involved; in particular they should not contain "testimonials" or "endorsements" which may give such an impression.

10.7 Copies for inspection

Advertisers and their agencies should hold ready for inspection by the ASA, copies of any testimonials used in advertising. Such copies should be signed and dated by the persons providing the testimonials and should confirm what is said in any advertisement.

11. Protection of privacy and exploitation of the individual

11.1 Advertisements should not, except in the circumstances noted in 11.2 portray or refer to, by whatever means, any living persons, unless their express prior permission has been obtained. Advertisers should also take care not to offend the religious or other susceptibilities of those connected

in any way with deceased persons depicted or referred to in any advertisement.

11.2 This ruling does not apply—

11.2.1 to the use of crowd or background shots in which individuals are recognisable, provided that neither the portrayal, nor the context in which it appears is defamatory, offensive or humiliating. However, an advertiser should withdraw any such advertisement if a reasonable objection is received from a person depicted;

11.2.2 to advertisements for books, films, radio or television programmes, press features and the like, in which there appear portrayals of, or references to, individuals who form part of their subject matter;

11.2.3 to police or other official notices;

11.2.4 to occasions when in the ASA's opinion the reference or portrayal in question is not inconsistent with the subject's right to a reasonable degree of privacy and does not constitute an unjustifiable commercial exploitation of the individual's fame or reputation.

11.3 Particular attention is drawn to the Merchandise Marks Act 17 of 1941.

12. Identification of advertisements

12.1 Advertisements should be clearly distinguishable as such whatever their form and whatever the medium used. When an advertisement appears in a medium which contains news, editorial or programme matter it should be so designed, produced and presented that it will be readily recognised as an advertisement.

12.2 In print media, wherever there is any possibility of confusion, the material in question should be headed conspicuously with the words ADVERTISEMENT or ADVERTISEMENT SUPPLEMENT, and should be boxed in or otherwise distinguished from surrounding or accompanying editorial matter. For further guidance see Section V.

12.3 In Electronic Media particular care should be taken to clearly distinguish between programme content and advertising. Where there is a possibility of confusion, advertising should be clearly identified in a manner acceptable to the ASA.

13. Safety

Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety. Special care should be taken in advertisements directed towards or depicting children or young people.

14. Children

14.1 *Children and safety*

14.1.1 General principle

14.1.1.1 Advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.

14.1.1.2 The aim of the general principle is:

- that children should not be brought under the impression that it is acceptable and safe to be in certain surroundings; and
- that the depiction of a particular activity or circumstances in such a way would not have the likely effect that children would attempt to emulate it with the concomitant risk of physical, moral or mental harm or that the impression is created that it is acceptable to act in a certain manner.

14.1.2 Instances where the above principle may apply are, *inter alia*, the following:

An advertisement:

- which encourages children to enter strange places or to converse with strangers in an effort to collect coupons, wrappers, labels or the like;
- where children appear to be unattended in street scenes unless they are obviously old enough to be responsible for their own safety, and where they are shown to be playing in the road unless it is clearly shown to be in a play area or other safe area, in street/traffic scene where they are seen to disobey traffic rules;
- where children are seen leaning dangerously out of windows or over bridges, or climbing dangerous cliffs;
- where small children are shown climbing up to take things from a table above their head or where medicines, disinfectants, antiseptics or caustic substances are shown within reach of children without close parental supervision, or where unsupervised children are shown using these products in any way;
- where children are being shown using matches or any gas, paraffin, petrol, mechanical or mains powered appliances in such a way which could lead to their suffering injury.

14.1.3 Possible justification of depicting children in dangerous situations would be:

- advertising promoting safety or safe practices; or
- clearly surrealistic activities which could be perceived as such by the child as likely viewer, would be excluded.

14.2 Children's credulity and lack of experience

14.2.1 General principles

Advertisements should not exploit the natural credulity of children or their lack of experience and should not strain their sense of loyalty.

14.2.2 Instances where the above principle may apply are, *inter alia*, the following:

- for a commercial product or service which contains any appeal to children which suggests in any way that unless the children themselves buy or encourage other people to buy the product or service, they will be failing in some duty or lacking in loyalty toward some person or organisation, whether that person or organisation is the one making the appeal or not;

- which leads children to believe that if they do not own the product advertised they will be inferior in some way to other children or that they are liable to be held in contempt or ridicule for not owning it;

- dealing with the activities of a club where children meet is allowed provided there is a clear statement that the club is carefully supervised in the manner of the behaviour of the children and the company they keep and that there is no suggestion of the club being a secret society;

- offering a free gift, where the gift is not "free" in a literal sense, ie where it is available without a consideration. If a condition applies, ie "free with . . .". This fact should be stated as well as any other conditions that will apply if the free gift is not deliverable immediately if the main conditions, eg the purchase of something, is met. The gift should be portrayed in such a manner that its size can be determined by showing it in relation to some common object.

14.3 *Portrayal of children*

Children should not be portrayed as sexually appealing, provocative or in any manner which involves any form of sexual innuendo.

14.4 *Use of children in advertising*

In using children in advertising attention is drawn to the provisions of Sections 43, 44 and 55(6)(b) of the Basic Conditions of the Employment Act of 1997.

15. Guarantees

15.1 "Guarantee" and "warranty" are used by advertisers in two distinct senses:

to describe a formal written undertaking, often with legal force, to reimburse a purchaser for the cost of the product itself, or the cost of having it put right in the event of defects becoming apparent; and

more generally, as an alternative to "promise" and without any formal (particularly legal) obligation being intended to be understood.

Because the possibilities of confusion are considerable, the advertiser is under an obligation to be as clear as possible as to the sense in which he uses these words.

15.2 Advertisements should not contain any reference to "guarantee" or "warranty" which take away or diminish any rights which would otherwise be enjoyed by consumers; purport so to do; or may be understood by the consumer as so doing.

15.3 Where an advertisement expressly offers, in whatever form, a guarantee or warranty as to the quality, life, composition, origin, duration, etc. of any product, the full terms of that guarantee should be available in printed form for the consumer to inspect - and, normally, to retain - before he is committed to purchase.

15.4 Where a phrase such as "money back guarantee" is used, it will be assumed that a full refund of the purchase price of the product will be given to dissatisfied consumers, either throughout the reasonably anticipated life of the product or within such period as is clearly stated in the advertisement. On mail order advertisements see further Appendix D.

15.5 There is no objection to the use of "guarantee" etc. in a colloquial sense provided there is no likelihood of a consumer supposing that the advertiser in using the word is expressing a willingness to shoulder more than his purely legal obligations.

16. Money-back undertakings

16.1 Neither "guarantee" nor "warranty" nor any word derived from either, should be used in an advertisement to describe or refer to an undertaking, the substance of which is merely to refund the price of a product within a brief trial period to dissatisfied purchasers. Where such an undertaking is given in an advertisement the time within which claims must be made by consumers should be clearly stated and should make due allowance for the time taken for delivery and return of the product.

16.2 Time limit on money-back offers

Where an advertiser, in an advertisement, makes an offer to refund part of the purchase price of a product under certain conditions, the period for which the offer is valid shall be stipulated in the advertisement.

17. Use of the word "new" in advertising

17.1 The word "new" or words implying "new" may be used in all media, packaging, posters, billboards, etc for any entirely new product or service marketed or sold during a given 12-month period.

17.2 It may also be used to advertise any change or improvement to a product, service or package, provided that the change or improvement is material and can be substantiated and defined.

17.3 The maximum use of the word "new" or words implying "new" in the above prescribed context shall be confined to a 12-month period calculated from date of proven first usage in an advertisement. In exceptional circumstances, the ASA may agree to an extension of the 12-month period.

17.4 To avoid consumer confusion:

17.4.1 In electronic, print and outdoor media, the "new" message must first be exposed no later than 90 days after "date of proven first usage" of the product/service to which the "new" message applies. Thereafter, the message may be exposed continuously or intermittently for a period not exceeding 12 months from the "date of proven first usage" of the product/service.

17.4.2 On packaging of physical products, the "new" message should be applied to the package from the "date of proven first usage" and should be used continuously for the period that the advertiser wishes to expose the "new" message but for no more than 12 months from the date of proven first usage" of the product.

17.5 The provisions of clauses 17.1, 17.2, 17.3 and 17.4 above shall apply, *mutatis mutandis*, to advertisements and to packaging announcing any change or improvement in a product, service or package without the word "new" being used.

18. Use of animals in advertising

Advertisers must satisfy the ASA that no animal is caused pain or distress in the course of making any advertisement and no advertisement may

contain anything that might reasonably be thought to encourage or condone cruelty or irresponsible behaviour towards animals.

The use of animals in circumstances other than "natural" is subject to independent supervision and/or approval by Animal Welfare Organisations such as the Council of the SPCA or Animal Anti-Cruelty League.

19.Pricing policy

When any indication of cost is given in an advertisement regard should be had for the following provisions:

19.1 Quotation

The selling price at which the goods will be sold to the purchaser against immediate payment must be quoted in full.

19.2 Inclusiveness

Such selling price must include all necessary or incidental costs without which the product cannot or may not be purchased, such as a deposit for a container. Where impracticable to include such costs in the quoted price the consumers' liability to pay such costs must be stated prominently and in a font size not less than that of half the purchase price. (Refer to Clause 30 (Cellular telephones) of Section III.)

The advertised price for travel packages must clearly communicate:

19.2.1 Where the price may fluctuate due to currency fluctuation or other external factors the nature and possible extent of this fluctuation.

19.2.2 Where the advertised price is only available through a specific channel (e.g. on a specific airline).

19.2.3 Validity of sales period if seasonal rates apply.

19.2.4 Where compulsory payments to a third party cannot be collected by the advertiser in advance of the trip.

19.2.5 Airline and Travel Agency price advertising should mention any obligation service fee or administration fee payable by the consumer.

19.3 Clarity

If reference is made in an advertisement to more than one product, or more than one version of a single product, it should be clear to which product or version any quoted price relates. If a product is illustrated, and a price quoted in conjunction with the illustration, advertisers should ensure that what is illustrated can be purchased for the price shown.

19.4 VAT

Attention is drawn to the provisions of Sections 64 and 65 of the Value-Added Tax Act 89 of 1991.

52

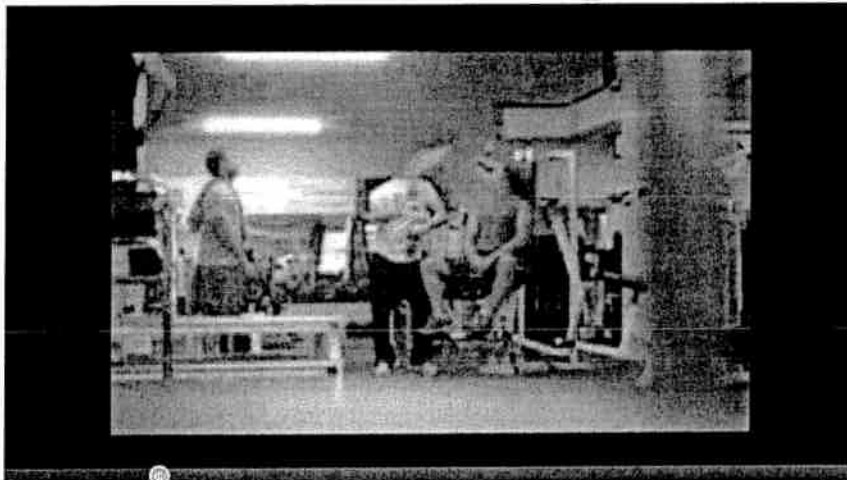
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Dial Direct - Gym Advert

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Dial Direct exercises its right to throw its weight around. 0 likes, 0 dislikes

All Comments
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Suggestions

- Vodacom Unlimited Music**
by VODACOMTV
2,288 views Promoted Video
- Dial Direct - Urinal Advert**
by dialdirectinsurance
275 views
- Dial Direct - Elevator Advert**
by dialdirectinsurance
235 views
- Dial Direct Golfer advert**
by ByronLippatt
54 views
- Funny Gym Commercial!**
by funknoir
106,372 views
- Heineken Commercial - Man With Talent**
by zelfweten
333,804 views
- You Make Joburg Great (YMJG)**
by StephanPenguin
4,206 views
- Eddie Izzard- Death Star Canteen**
by Thom2200
13,953,195 views
- myHotelVideo.com presents Meriton Bondi Junctio...**
by myHotelVideo
12,385 views
- Christian The Lion, The Reunion by www.breezesve...**
by Cimincorporations
55,042 views
- Funny Insurance Ad - Dial Direct**
by UpstreamAdvertising
8,514 views
- Jeep Commercial With Singing Animals**
by christopher3071
417,940 views
- Lion Bar - 1991 UK Advert**
by DrDejvu
33,625 views
- Dave's Gym Advert**
by HenryBurton
92,680 views
- Budget Direct Car Insurance - Shower**
by budgetdirect
19,052 views
- Dial Direct: Break-down**
by BLinguaIBStefanus
195 views

"Slow downloads ruining your life?" - iBurst / ...
by Vhptvchannel1

Help About Press & Blogs Copyright Creators &
Partners Advertising Developers Safety Privacy Terms
Report a bug Try something new! Language: English Location: Worldwide Safety mode: Off

293 views

0:47

AA Travel Insurance - Because holidays breakdown...

by ginarudd100
750 views

0:42

Dial Direct - Parking Ticket Advert

by dialdirectinsurance
298 views

0:47

The Dial Direct Pothole Brigade

by dialdirectinsurance
16 views

2:10

Gold's Gym Commercial

by localsonlynj2
28,244 views

0:31

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Handwritten signature or initials in the bottom right corner.

"AG 6.2"

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Dial Direct - King Bensley

LessYadaYada 1 video [Subscribe](#)



0:14 / 0:21

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41,270

Uploaded by LessYadaYada on Jul 1, 2011

Dial Direct's anti hero, Yada dresses up as a famous international actor and

225 likes 6 dislikes

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All Comments (13)

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Sign In or Sign Up now to post a comment!

I don't see the reference of Ben Kingsley anywhere..

KismetSafe4 14 hours ago

Now that is very clever :-)

benecivus 17 hours ago 2

WHAT ever happened to bla bla bla huh?

KunasaSuke 19 hours ago

O_o

ChrisHowley123 21 hours ago

Okayyy hand heads

TheRandomDandoms 1 day ago

simple and smart :p

mk01hb 1 day ago

Really nice and interesting

raana1010 2 days ago

very nice video I like it.

sweet4438 2 days ago

Lame... unoriginal

nov1 2 days ago

AWESOME!!!!

CallaThera 2 days ago

lol

mk01hb 2 days ago

Lame

mimiivorew 2 days ago

hahaha

Markwata028 2 days ago

1 2 Next

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Suggestions



Qantas' Great Crusade
by Qantas
17,823 views [Promoted Video](#)



Cheap Flights with subtitles
by bolikok
3,815,107 views



TYT Hour - June 18th, 2010
by TheYoungTurks
9,978 views



Rick Dees. A Class Act! "Live Fearless with Sam..."
by sambotta
1,934 views



Roger Moore "I Married A Beautiful Woman" James...
by sambotta
193,066 views



Funny Insurance Ad - Dial Direct
by UpstreamAdvertising
8,315 views



Dial Direct's 'Inner Yada' TV Ad
by marketingmixnig
548 views



Dial Direct - Gym Advert
by dialdirectinsurance
516 views



Dial Direct - Elevator Advert
by dialdirectinsurance
245 views



Dial Direct - Urinal Advert
by dialdirectinsurance
301 views



Dial Direct - Parking Ticket Advert
by dialdirectinsurance
268 views



Hilarious car accident television advert - www...
by crackevdian
1,678 views



Dial Direct Insurance
by cannauranceorg
29 views



Budget Direct Car Insurance - Airport
by budgetdirect
2,767 views



funny advertisement of insurance
by outslut
26,334 views



Dial Direct: Break-down
by BLingualESStefanus
438 views



"Walk it off, Chuck" Mercury Insurance directed...
by anygenusiv
1,123 views

Handwritten signature

56

Funny Insurance Ad!!
by crackervillan
229 views

0:36

Funny Insurance Ad!!
by eissazone
1,474 views

0:31

South African Advert - Nestle
Milk Chocolate - ...
by Seanellybaby
2,821 views

0:36

Funny insurance commercial
by oraycommercials
2,419 views

1:11

Load more suggestions

Handwritten scribbles

"AG7" 57

Twitter Feeds



[stephdawborn](#) Stephanie Dawborn

This new **Dial Direct** ad, the parody of Sanlam's Ben Kingsley ad, is so going to get pulled from our tv screens ~ funny but frowned upon

[3 Jul](#)



[KhanyiTshume](#) Khanyi Tshume

The new **dial direct** ad?! Big fat NO! How can they ridicule such a good ad? *forgot what insurance co the original ad belongs to* SMH!

[3 Jul](#)



[lieslvwllieslvwl](#)

"@Lindel Pillay: Did Dial Direct just diss **Santam**? **Santam**, would never stoop to that level So glad to be a part of the real thing! [#TeamSantam](#)"

[3 Jul](#)



[lieslvwllieslvwl](#)

"@em_jay7: "@lekwele: Is dial direct allowed to diss **Santam** that directly." I love that ad, don't think it will be on air for long". Exactly

[3 Jul](#)



[jacquinBJacquin Botha](#)

Love the dial direct spoof of the **santam** ad. Hilarious. [#advertising](#)

[2 Jul](#)



[mo_moshele](#) Uncle Mo

Just saw the new Dial Direct ad that takes a stab at **Santam**'s 'Real Insurance' ad... Wow

[2 Jul](#)



AG

Classic Verified

#DialDirect has joined the spicy ad trend! Love that new yada-yada ad, jus cant rmbtr whether they'r rippin off metropolitan or **santam** or wat!

2 Jul



eM_Jay7Mthuthuzeli Jama

"@lekwete: Is dial direct allowed to diss **Santam** that directly." I love that ad, don't think it will be on air for long

2 Jul



adamZAAdam Herman

The new dial direct advert which rips off the ben kingsley **santam** advert is HILARIOUS!

2 Jul



darrenmgDarren Gilbert

Has anyone seen the last Dial Direct ad? Spoof of **Santam**'s ad with Ben Kingsley & lookalikes. Ouch!

#adwars

2 Jul



lekweteK Moshoeshoe

Is dial direct allowed to diss **Santam** that directly.

2 Jul



KagisoGillKagiso Gill

@Sego1gp I foresee a lawsuit/complaint being lodged by **Santam**...

2 Jul



Lindel PillayThe First Lady

Did Dial Direct just diss **Santam**??? :-O Woah! **Santam**, would never stoop to that level... So glad to be a part of the real thing! #TeamSantam

2 Jul



Handwritten signature or initials.

miss_mbaliMbali Ndlovu

Dial direct just took it to the max, the took it to **santam** - *screams*

2 Jul



dustinchickDustin Chick

Ok so the new Dial Direct ad is a direct stab at **Santam**. Wonder how long the complaint to the ACA will take?

2 Jul



ThobileMpunzanaThobile Mpunzana

Dial Direct bathong? What did you do to the **Santam** ad? Ayi mani

2 Jul



ThaboPatrickThabo Patrick

#DialDirect ripping the #**Santam** ad. Very funny indeed.

1 Jul



MrCBondClayton Bond

Killer **Santam** ad, @Char_lott ie . You one funny motherfcker!!

1 Jul



michellecoetseeMichelle Coetsee

Brilliant! RT @pepemarais: Dial Direct's Yada kicks sand in **Santam's** eyes - <http://t.co/f7cjwWQ>

1 Jul



pepemaraisPepe Marais

Dial Direct's Yada kicks sand in **Santam's** eyes - <http://t.co/f7cjwWQ>

1 Jul



MaduvhaMMaduvha Mphaphuli

Saw Dial Directs reply to the **Santam** advert... Ouch

1 Jul

Handwritten signature or initials.



BisoLbitzBiso L'bitz

#Deathby #DialDirect's new ad! Taking a stab @ #Santam

1 Jul



MrGKrugerKruger

Be on the look out for the spoof dail direct add of the ben kingsly **santam** add

1 Jul



michellecoetseeMichelle Coetsee

Brilliant! RT @pepemarais: **Dial Direct**'s Yada kicks sand in Santam's eyes -

<http://t.co/f7cjlwWQ>

1 Jul



pepemaraisPepe Marais

Dial Direct's Yada kicks sand in Santam's eyes - <http://t.co/f7cjlwWQ>

1 Jul



LynnBoffaLynn Boffa

RT @megsbiebs: **Dial Direct** - King Bensley <http://youtu.be/vEJnTAW3xQs> Bit ridiculous..

< shocking!

1 Jul



worldofjujuJuanel van der Walt

BWAHA! South Africans, have a lookie! RT @KlikKlikBang: Check this video out -- **Dial**

Direct - King Bensley <http://t.co/oopuNMb> via @youtube

1 Jul

ile

KlikKlikBangJesse-Leigh Elford

Check this video out -- **Dial Direct** - King Bensley <http://t.co/oopuNMb> via @youtube

1 Jul

Handwritten signature



tatera1Thera

#WeNeed2FindYouAJob RT @MizAnne157: OMG!! The new **dial direct** advert ripping off Sanlam.... *dead*

1 Jul



Kee tooKeitumetsi Mokoena

The new **Dial Direct** add just blew me away!!! #brilliant...

1 Jul



OliviaShihambeOlivia Shihambe

Lmao I love the new **dial direct** add! Lmao talk about a "direct" low blow! #done!

1 Jul



TrevozTrevor Zondi

YOH!!! OMW... have u seen the new **Dial direct** ad??? talk about in ur face!!!

1 Jul



Lethu28Lethu Ziqubu

The new **Dial Direct** ad is off the hook but they will take it out on Monday by the competition board. Freaken hilarious.

1 Jul



thutozadc1Thuto Mkhize

The new **Dial Direct** advert is so 'directed' @ da competition! Funny!

1 Jul



siphamandlamdunSiyamdumisa mdunge

Dial direct went a bit too far with that ad, undermining santum!, but it is a good ad, its a pitty they will have to pull the ad!

1 Jul



eM_Jay7Mthuthuzeli Jama

Yo!!!!!!! Did y'all see the **dial direct** ad? Hilarious ish

1 Jul



MissNadiaMNadia Matlala

DID ANYONE JUST SEE THE NEW **DIAL DIRECT** AD O_O O_O O_O

1 Jul



Chimma_RChimma Roma

Dial Direct, that's a pathetic advert

1 Jul

Handwritten signature or initials

DELIVERED BY EMAIL

Dial Direct Insurance Company Limited

By email: brad@telesure.co.za

For attention : Head of Marketing : Mr Bradley du Chene

Stellenbosch Office
2nd Floor Block B
De Wagenweg Office Park
Stellentia Street Stellenbosch
7600 South Africa
P O Box 1008 Stellenbosch 7599
Docex 10 Stellenbosch
Tel +27 (0)21 809 6000
Fax +27 (0)21 887 1091
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: Bradley du Chene
OUR REFERENCE: J Hollesen
DIRECT LINE: +27 (0)21 809 6008
DIRECT FAX: +27 (0)21 809 6141
EMAIL: jhollesen@werksmans.com

02 July 2011

URGENT

Dear Sirs,

SANTAM LIMITED / DIAL DIRECT INSURANCE LIMITED – COPYRIGHT INFRINGEMENT

1. We act on behalf of Santam Limited ("Santam") in legal matters.
2. Our client is the proprietor of the copyright in and to the literary work and cinematograph film in respect of its latest advertisement promoting and advertising its services in which Sir Ben Kingsley and another actor with similar features to Kingsley walks along a beach ("Santam Advertisement").
3. It has come to our client's attention that an advertisement has been created by yourselves or on your behalf which is being flighted on national television in which our client's copyright in and to the Santam Advertisement has been reproduced in which you have merely replaced the heads of the parties used in the Santam Advertisement with the talking hand which you use in your other advertisements ("the Dial Direct Advertisement").
4. Our client's instructions are that you have no right whatsoever to use any of its copyright material with the result that your unauthorised reproduction of our client's works constitutes an infringement of copyright in accordance with the provisions of the Copyright Act, 98 of 1978. Liability arises irrespective of whether you have knowledge of the existence of the copyright.
5. Our client's further instructions are that Mr Ravi Jaga of its Corporate Legal Services department contacted your Mr Bradley du Chene telephonically this afternoon advising that Santam had become aware of the Dial Direct Advertisement and the flagrant infringement of its copyright providing yourselves with an opportunity to immediately desist from the

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors DG Williams (Chairman) P le Roux (Deputy Chairman) AL Armstrong DA Arteiro WJJ Badenhorst AR Berman NMN Bhengu JM Bortz TK Bortz GT Bossr TJ Boswell MC Brönn W Brown SD Browne PF Burger PG Cleland JG Cloete PPJ Coetser D Corbett R de Villiers GW Driver WJ du Plessis LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer H Goolam ID Gouws GF Griessel AK Heeger D Hertz J Hollesen VR Hosiosky BB Hotz HC Jacobs MC Janse van Rensburg TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny BM Kew N Kirby HA Kotze PD Kriel S Krige C Leclercq MM Lessing E Levenstein JS Lochner HA(Boy) Louw L Louw DA Loxton JS Lubbe BS Mabasa PK Mabaso MPC Manaka G Marinus H Masondo C Moraitis TA Mthiyane JJ Niemand WE Oosthuizen M Pansegrouw CP Pauw AV Pillay C Pillay BC Price RJ Raath L Rood BR Roothman W Rosenberg M Sader LK Silberman MB Simon JA Smit PO Steyn J Stockwell S Teichner JG Theron JJ Truter KJ Trudgeon M van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis JGL Visagie RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans PA Winer A Wood E Wood BW Workman-Davies

JOHANNESBURG • CAPE TOWN • PAARL • STELLENBOSCH • TYGER VALLEY

flying thereof to avoid urgent interdict proceedings being launched by our client. We confirm that Mr du Chene advised Mr Jaga that consideration would be had to the foregoing upon receipt of a letter of demand which could be sent to his email address reflected herein. We therefore place on record that our client has provided yourselves with an opportunity of desisting from your unlawful conduct prior to the launching of legal proceedings.

6. In the light of the foregoing unlawful conduct we are instructed to demand from you, as we hereby do, that you immediately –

- 6.1 Cease all use of Dial Direct Advertisement and/or any other representations or replicas or reproductions or adaptations of the whole or a material part thereof or any imitation thereof;
- 6.2 Instruct the broadcasters flying the Dial Direct Advertisement to immediately cease the flying thereof;
- 6.3 Remove the Dial Direct Advertisement from any material in which it is used including on any websites.
- 6.4 Furnish our clients with the following in writing:
 - 6.4.1 A confirmation that all use of the Dial Direct Advertisement and / or adaptation thereof has ceased;
 - 6.4.2 An undertaking that you will desist from any future use whatsoever of the Dial Direct Advertisement and / or adaptation thereof.

Should we not receive a response by way of full compliance with the abovementioned demands by 12:00 on 3 July 2011 our client will launch an urgent interdict application without reference to you.

Our client's rights to launch an action for damages is reserved particularly such additional damages as may be applicable in terms of section 24(3) of the Copyright Act by taking into account the flagrancy of the infringement.

Yours faithfully

J HOLLESEN

THIS EMAIL HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

"AG9"
65

From: Bradley Du Chenne [brad@telesure.co.za]
Sent: 03 July 2011 10:33 AM
To: Janine Hollesen
Cc: ravijaga13@gmail.com; Gerhard Cloete; Karlie Jordaan
Subject: Re: SANTAM LIMITED / DIAL DIRECT INSURANCE COMPANY LIMITED
Dear Janine

Your email of yesterday refers.

As discussed with Ravi yesterday evening the time lines for withdrawal of the advertising material was not reasonable in that it was feasibly impossible to withdraw the material from the relevant media companies over the weekend.

In so far as your inference that our advert is an infringement of your client's copy we request that we be afforded time until close of business on Monday to consult with our legal counsel. We however at this point in time deny that we have infringed Santam's copyright.

With reference to point 3 of your letter of demand

Bradley Du Chenne
Head of Marketing & Sales
Telesure
Tel:+27117789791
brad@telesure.co.za
Sent from my iPad

On 02 Jul 2011, at 18:29, "Janine Hollesen" <jhollesen@werksmans.com> wrote:

[<111070218290202902.gif>](#)

Dear Mr du Chene,

Please see the letter attached hereto for your urgent attention.

I refer to the telephone discussion which you had this afternoon with Mr Ravi Jaga of Santam's Corporate Legal Services who advised that I could provide you with his mobile number being 082 777 6611.

Please note however that any response to our letter is to be addressed to ourselves.

I look forward to your urgent response.

Yours sincerely,

Janine Hollesen
Director
T +27 (0)21 809 6011
F +27 (0)86 510 6639
jhollesen@werksmans.com

Werksmans Attorneys
2nd Floor, Block B, de Wagenweg Office Park,
Stellentia Road, Stellenbosch, 7600
P O Box 1008, Stellenbosch, 7599
Stellenbosch , South Africa
T +27 (0)21 809 6000
F +27 (0)21 887 1091

66

This e-mail and its attachments if any, are subject to the Werksmans Inc. e-mail disclaimer which is available on our website at [Disclaimer](#) or from our Marketing department on 011 535 8000 or info@werksmans.com. A list of Werksmans Directors is available at [People Profiles](#). itevomcid

<LETTER OF DEMAND - DIAL DIRECT.pdf>



"AG 10"
67

From: Liesl Viljoen [lieslv@lifedirect.co.za]
Sent: 03 July 2011 11:43 AM
To: Janine Hollesen
Subject: Fwd:

Dear Janine

Further to my email of earlier today, Dial Direct's stance on the matters raised by you is as follows:

1. Without entering into any debate regarding the merits of this matter, we do not believe that your client has any valid basis to bring any application on the basis of urgency or at all and Dial Direct reserves it's rights to defend any such action if need be.
2. Regarding any possible infringement of copyright, Dial Direct vehemently denies that it has in anyway infringed your client's copyright.
3. Should it be argued that Dial Direct has infringed the copyright, which is denied, Dial Direct shall argue that it's advertisement is sufficiently differentiated from your client's advertisement in that ;
 - a) your client's advert has in no way been reproduced, as alleged;
 - b) an independent production house was instructed by Dial Direct through it's advertising agency to produce Dial Direct's advertisement which was shot on location in mid June;
 - c) there are a number of differentiators between the two advertisements including, but not limited to, background weather, background music, dialogue, clothing, closing billboard, payoff line and physical human features (hands versus head).
 - d) it cannot cause any confusion in a consumer's mind regarding the service provider involved.
4. Dial Direct has over the last two years established it's advertising payoff line of " Less Yada Yada, more Ching Ching" as an established brand property. In this regard, Dial Direct's payoff line has become instantly recognisable to consumers.

In the circumstances Dial Direct shall not, at this point in time, accede to any of the demands contained in paragraph 6 of your letter of 2 July 2011. Further, Dial Direct's rights are reserved in full to consult with it's legal representative and provide you with a more detailed reply by close of business on Monday.

In the interim, should your client chose to proceed with any application, as it has threatened, then Dial Direct's rights are reserved to oppose any such application. Dial Direct expects to receive notice of such application and then our rights are reserved to oppose such application.

Regards
Bradley Du Chenne

Sent from my iPad

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<http://repository.isservices.co.za/Disclaimer.htm>

Handwritten signature/initials

"AG 11"
68

From: Janine Hollesen
Sent: 03 July 2011 07:33 PM
To: Liesl Viljoen; brad@telesure.co.za
Cc: 'Barbara Vaughan'
Subject: SANTAM LIMITED / DIAL DIRECT INSURANCE LIMITED

Importance: High

Dear Mr du Chene,

We refer to your email below and record that the points which you have raised are neither material nor are they related to your infringement of our client's copyright.

Not only does your advertisement amount to an infringement of our client's copyright it also constitute constitutes unlawful competition.

Please note that we are preparing legal proceedings which will be launched tomorrow.

Yours sincerely,

Janine Hollesen

Director

T +27 (0)21 809 6011

F +27 (0)86 510 6639

jhollesen@werksmans.com**Werksmans Attorneys**

2nd Floor, Block B, de Wagenweg Office Park,

Stellentia Road, Stellenbosch, 7600

P O Box 1008, Stellenbosch, 7599

Stellenbosch, South Africa

T +27 (0)21 809 6000

F +27 (0)21 887 1091

From: Liesl Viljoen [mailto:lieslv@1lifedirect.co.za]
Sent: 03 July 2011 11:43 AM**To:** Janine Hollesen**Subject:** Fwd:

Dear Janine

Further to my email of earlier today, Dial Direct's stance on the matters raised by you is as follows:

1. Without entering into any debate regarding the merits of this matter, we do not believe that your client has any valid basis to bring any application on the basis of urgency or at all and Dial Direct reserves it's rights to defend any such action if need be.
2. Regarding any possible infringement of copyright, Dial Direct vehemently denies that it has in anyway infringed your client's copyright.
3. Should it be argued that Dial Direct has infringed the copyright, which is denied, Dial Direct shall argue that it's advertisement is sufficiently differentiated from your client's advertisement in that :
 - a) your client's advert has in no way been reproduced, as alleged;
 - b) an independent production house was instructed by Dial Direct through it's advertising agency to produce Dial Direct's advertisement which was shot on location in mid June;
 - c) there are a number of differentiators between the two advertisements including, but not limited to, background weather, background music, dialogue, clothing, closing billboard, payoff line and physical human features (hands versus head).
 - d) it cannot cause any confusion in a consumer's mind regarding the service provider

69

involved.

4. Dial Direct has over the last two years established it's advertising payoff line of " Less Yada Yada, more Ching Ching" as an established brand property. In this regard, Dial Direct's payoff line has become instantly recognisable to consumers.

In the circumstances Dial Direct shall not, at this point in time, accede to any of the demands contained in paragraph 6 of your letter of 2 July 2011. Further, Dial Direct's rights are reserved in full to consult with it's legal representative and provide you with a more detailed reply by close of business on Monday.

In the interim, should your client chose to proceed with any application, as it has threatened, then Dial Direct's rights are reserved to oppose any such application. Dial Direct expects to receive notice of such application and then our rights are reserved to oppose such application.

Regards
Bradley Du Chenne

Sent from my iPad

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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.

In the matter between:

SANTAM LIMITED

Applicant

and

DIAL DIRECT INSURANCE LIMITED

First Respondent

JOE PUBLIC (PTY) LTD

Second Respondent

AFFIDAVIT

I, the undersigned,

ALISTAIR JOHN KING

do hereby make oath say that:



1. I am one of the founding directors of King James Advertising Cape Town (Pty) Limited ("*King James*") which is an advertising agency responsible for the creation of marketing communications for a number of clients among which are blue chip companies, including the Applicant. King James is a South African registered company which carries on business here
2. The facts contained herein are within my own personal knowledge and are, to the best of my belief, both true and correct, or are derived from the properly kept, accurate and ongoing records of the King James, to which I have access. Any legal submissions advanced in this affidavit are on the advice of the Applicant's legal representative, which advice I accept as being correct.
3. I have read the affidavit of Anel Grobler and confirm the contents thereof insofar as they pertain to King James, the Real McCoy and the Yada Yada advertisements.
4. The Second Respondent and its director Mr. Pepe Marais are well-known to me and experienced advertising agents. They are bound by the Advertising Standards Authority Code ("*the ASA*"). I confer with Ms. Grobler that the Yada Yada advert flagrantly offends this code. As appears from Mr. Marais own tweet – to which I refer below – he himself has characterised the Yada Yada add as denigrating of the Applicant and as "*kicking sand in Santam's eyes.*"
5. In or about October 2010 King James was commissioned by Anel Grobler of Santam (Pty) Limited ("*the Applicant*") to attend to the rebranding and repositioning of the SANTAM brand.



6. This rebranding exercise carried out by King James was concerned with all aspects of the Applicant's corporate branding which included the updated umbrella, logo, a new slogan "*Advertising Good and Proper*", communications material and advertisements, including the Applicant's "*Real McCoy*" advertisement.
7. I was the creative director in respect of the Applicant's "*Real McCoy*" advertisement, and as such was responsible for the conceptualisation, scripting and creation thereof on behalf of the Applicant. The final product is a culmination of a lengthy process which commenced with the intensive consideration and interpretation of the Applicant's strategic brief. King James and representatives of Santam's marketing department, including Anel Grobler, held numerous workshops and meetings in order to ensure that the final product was created in terms of the Applicant's commission, would address its market demographic and would provide a distinctive benchmark to serve as the foundation phase of a long-term marketing campaign.
8. King James in turn commissioned Dean Blumberg on behalf of the Applicant to direct the making of the Real McCoy advertisement which took place over a number of days on Noordhoek beach in the Western Cape which was approved by client and flighted on national television for the first time on 8 May 2011.
9. Subsequent to the flighting of the Real McCoy advertisement, Mr. Pepe Marais, a director of the Second Respondent, telephoned me to compliment me on the Real McCoy. Second Respondent (and Pepe) has for some time been the First Respondent's advertising agency.



10. On 1 July 2011, upon becoming aware of the First Respondent's Yada Yada advertisement I spoke to Mr. Marais who acknowledged that he and Second Respondent had produced it. He said "*we thought twice about doing it*". I refer to the reproduction of a Twitter feed concerned with the Yada Yada advertisement which has been annexed to the founding affidavit and particularly refer to Mr. Marais' tweet posted on 1 July 2011, which has been reproduced below, for ease of reference –



pepemaraisPepe Marais

Dial Direct's Yada kicks sand in Santam's eyes - <http://t.co/f7cjwWQ>

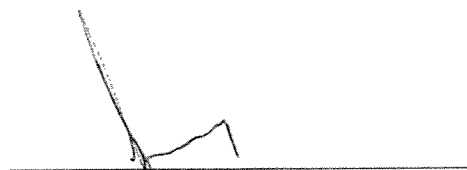
1 Jul

11. King James is and has at all relevant times been a registered company in terms of the laws of the Republic of South Africa, including the periods during which the Real McCoy advertisement was created.
12. By virtue of my capacity as a director of King James and the creative director responsible for the conceptualisation, scripting and making of the Real McCoy advertisement, I can confirm that all King James personnel who were involved in any aspect were at all material times South African residents and were acting in the course and scope of their employment with King James insofar as they used their time, effort and skill to create the Real McCoy.
13. No creative input or intellectual property which went into or forms part of the Real McCoy was derived from person(s) outside of the Applicant and King James or other than under my strict and direct supervision and control. The only possible exception may have been the director, Mr. Dean Blumberg who was specifically employed by King James on behalf of the Applicant.
14. Due to the fact that the Real McCoy advertisement was created under my supervision and control by employees of King James, I can confirm that no reference was made to any

- other materials or other works in the creation thereof. The Real McCoy is an entirely original work conceptualised (and scripted) and/or under my direction and control by me and created by King James pursuant to the Applicant's commission to do so.
15. The Real McCoy advertisement has been reduced to a material form, and is a fixation and storage on film and other matter of data, signals and a sequence of images capable, when used in conjunction with other mechanic and electronic devices, of being seen as a moving picture and of reproduction, and includes the sounds embodied with the film. It is not a computer program.
 16. As a consequence, I am advised that the work which is the subject matter hereof i.e. the Real McCoy advertisement, is protected by copyright as a cinematograph film, the copyright in which vests in the Applicant.
 17. In this regard I am advised further that in terms of section 21(1)(c) of the Copyright Act, where a person commissions the making of a cinematograph film and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall be the owner of the copyright subsisting therein for purposes of the Copyright Act. As set out above, Santam commissioned King James to create the television advertisement which was created by King James in pursuance of such commission for which King James has been paid, with the result that the Applicant is the proprietor of the copyright in and to the Real McCoy advertisement. However, insofar as any copyright may have vested in me or King James, it is hereby assigned to the Applicant.
 18. As an experienced advertising professional with more than 20 years experience in the field, I have no hesitation in saying that the Yada Yada advert offends the acceptable advertising norms and standards and is, moreover, causing the Applicant irreparable



harm by eroding the brand image and equity which we have created at a cost of millions.



ALISTAIR KING

I certify that this affidavit was signed and sworn to before me at *Cape Town* on this the *4* day of July 2011 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

ADV. MURRAY JOHN MARTYN BRIDGMAN
Huguenot Chambers
40 Queen Victoria Street
Cape Town
8001
Practising Advocate RSA
Ex officio Commissioner of Oaths

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.

In the matter between:

SANTAM LIMITED

Applicant

and

DIAL DIRECT INSURANCE LIMITED

First Respondent

JOE PUBLIC (PTY) LTD

Second Respondent

AFFIDAVIT

I, the undersigned,

SHIHAAM ABRAHAMS

do hereby make oath and say that:



1. I am the business unit head of the Santam Media Planning and Buying Portfolio of Vizeum Media South Africa (Pty) Limited (“Vizeum”). I have 10 years experience in the media industry.
2. The facts contained herein are within my own personal knowledge and are, to the best of my belief, both true and correct, or are derived from the properly kept, accurate and ongoing records of Vizeum.
3. I have read the founding affidavit by Anel Grobler and confirm the contents thereof, insofar as they relate to me, are to the best of my knowledge true and correct. I have been actively involved in the “Real McCoy” advertising campaign and have personal knowledge of the relevant events.
4. Vizeum is the Applicant’s media agency responsible for all advertisement planning and buying across all media, including television. Vizeum’s responsibilities include, *inter alia*, compiling the Applicant’s advertising schedules for the flighting of its advertisements across all television stations, in accordance with the client’s brief and budgetary requirements. We also audit the flightings to monitor the performance of the advertisement and to ensure that all flightings have taken place according to the bookings made.
5. I attach hereto as annexure “SA1” Vizeum’s media schedule in respect of the Applicant’s “Real McCoy” advertisement for the period 8 May 2011 to 30 June 2011 which reflects, *inter alia*, the following:



- 5.1 That the advert has aired 518 times across a variety of television broadcasting channels, including SABC 2 and 3, e-tv, MNET, and DSTV has been seen by more than 2.6million people per burst (there were two bursts over the relevant period);
- 5.2 The media value of the broadcasting of the adverts totals R11.4 million.
6. On the evening of Friday, 1 July 2011 I was contacted by Anel Grobler, the Applicant's brand manager, who informed me that the First Respondent had aired its "Yada Yada" advert on national television, and asked me to urgently try and ascertain whether or not the First Respondent had further flightings booked for over the weekend. I managed to establish from contacts at one of the television stations that the First Respondent had indeed booked airtime at certain stations over the weekend.
7. I have over 10 years experience in the media industry and have extensive knowledge of the process of booking airtime on television stations. Material deadlines to the stations are in general 5 days prior to flighting (MNET and DSTV have a 7 day prior to airing deadline). This is due to their internal planning requirements as the material needs to be timeously loaded onto their systems. Once the material is loaded onto the TV station system, it requires some manpower to action a request to withdraw an advert, as it is an automated system and would require manual intervention. It is not possible to remove the advert without instruction from the relevant media agency (acting on instructions from their client).



7. In order for the First Respondent to have placed the Yada Yada advert for airing over the weekend, the material would have had to have been delivered to the stations no later than Wednesday 12h00. By orchestrating the airing of the “Yada Yada” advert for over the weekend, the First Respondent no doubt wished to rely on the contention that it would have been difficult to pull the advert over the weekend from the television stations. I am advised that the First Respondent has in fact alleged that the deadline given to the First Respondent by the Applicant’s attorneys at 18h30 on Saturday, 2 July 2011 to pull the advert by 12h00 on Sunday, 3 July 2011 was unreasonable and that it was feasibly impossible to withdraw the material from the media over the weekend. Although it would require some effort, it is certainly possible to give the necessary instructions to the television stations to remove flightings of an advert over a weekend, and procure such removal, within a couple of hours. I can confirm that in my experience the pulling of adverts already loaded on a broadcaster’s system is possible, even over a weekend, which has also been confirmed telephonically by the relevant parties at two broadcasting stations. I accordingly do not agree with the First Respondent’s contentions in this regard.


SHIHAAM ABRAHAMS

I certify that this affidavit was signed and sworn to before me at Cape Town on this the 4th of day of July 2011 by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'





COMMISSIONER OF OATHS

Name:

Address:

Capacity

ADV. MURRAY JOHN MARTYN BRIDGMAN
Huguenot Chambers
40 Queen Victoria Street
Cape Town
8001
Practising Advocate RSA
Ex officio Commissioner of Oaths

SA.1 81

Client: Santam
 Campaign: Santam Brand Launch Campaign
 Period: 05 - 29 Mar 2011



Audience: INC 10066-18889 AGE25 AGE35 AGE50 U 5888(90) S 430 / INC 10090-18889 AGE25 AGE35 AGE50

Day	Date	Station	From	To	Plan Title	Sec	LT	Feature	Rate Code	Market Cost
Sun	20110508	ETV	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 92,000
Sun	20110508	ETV	2000	2140	MEDALION THE	60	T	Mini	PS2	R 114,000
Wed	20110511	ETV	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 92,000
Thu	20110512	ETV	2000	2140	CRUISE STAGE FIVE	60	T	Mini	PS4	R 98,000
Fri	20110513	ETV	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 92,000
Fri	20110513	ETV	2000	2140	LOOK UP	60	T	Mini	PS4	R 98,000
Sat	20110514	ETV	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 92,000
Sat	20110514	ETV	2000	2140	THEY'RE BACK	60	T	Mini	PS4	R 98,000
Sun	20110515	ETV	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 92,000
Sun	20110515	ETV	2000	2140	MALCOLM & EDIE	60	T	Mini	PS4	R 98,000
Mon	20110516	ETV	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Wed	20110518	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Wed	20110518	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Wed	20110518	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Thu	20110519	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Thu	20110519	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Thu	20110519	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Fri	20110520	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Fri	20110520	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Fri	20110520	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Sat	20110521	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sat	20110521	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sat	20110521	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Sun	20110522	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sun	20110522	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sun	20110522	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Mon	20110523	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Mon	20110523	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Mon	20110523	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Tue	20110524	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Tue	20110524	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Tue	20110524	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Wed	20110525	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Wed	20110525	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Wed	20110525	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Thu	20110526	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Thu	20110526	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Thu	20110526	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Fri	20110527	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Fri	20110527	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Fri	20110527	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Sat	20110528	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sat	20110528	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sat	20110528	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Sun	20110529	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sun	20110529	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Sun	20110529	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Mon	20110530	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Mon	20110530	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Mon	20110530	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000
Tue	20110531	KYKN	1900	1920	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Tue	20110531	KYKN	1930	1950	NEWS PRIME TIME	60	T	News	PS2	R 48,000
Tue	20110531	KYKN	2000	2140	FRAGE AND HENRI	60	T	Mini	PS2	R 48,000

118 R 8,923,000

ENTERTAINMENT CHANNEL'S	NUMBER OF SPOTS
DISC 1 (Discovery)	40
Discovery	50
Mnet Series	34
Mnet	36
E Japan Prime	19
TOTAL COST	678

Schedule Performance
 Target Market: HH R10 800+ Age 25+
 Universe Size: 3,898,000
 Total AFRs: 411.8
 Reach: 70.48%
 GR Reach: 46.1
 See Press: 8.9
 Target Market: Black Age 18-29 - Universe Size 7,922,000
 Reach: 62%
 GR Reach: 39%
 Avg Press: 1.8

STATION	SPOTS	REACH	GR REACH
ETV	118	70.48%	46.1%
KYKN	118	70.48%	46.1%

WTPB

SA

Client: Santam
 Campaign: Santam Brand Launch Campaign - Follow up
 Launch: 12-24 June 2011
 Revision: 1



Audience: AGE25 AGE35 AGE50 INC 10000-16999 U 36191000 S 649 (AGE25 AGE35 AGE50 INC 10000-16999)

Day	Date	Station	From	To	Plan Title	Dur	UT	Comment	Feature	Rate Code	Ratecard Cost
Sun	2011/06/12	MNET	1300	1359	HARRY'S LAW (R)	60	1	AValue	Dram	P34	14,000
Sun	2011/06/12	MNET	1500	1559	BLUE BLOODS @	60	1	AValue	Dram	P34	14,000
Sun	2011/06/12	MNET	1600	1659	SURVIVOR SA MALDIVES @ S	60	1	AValue	Real	P48	32,000
Sun	2011/06/12	MNET	1900	2029	CARTE BLANCHE	60	1	AValue	Maga	P80	130,000
Sun	2011/06/12	ETV	2000	2209	X-MEN: THE LAST STAND	60	1	AValue	Mov	E70	120,000
Sun	2011/06/12	MNET	2030	2209	GAMER	60	1	AValue	Mov	P80	130,000
Sun	2011/06/12	MNET	1800	1829	NIJUS	60	1	AValue	News	T41	106,000
Sun	2011/06/13	KYKN	1930	1929	ENJUS (ON KYKNET)	60	1	AValue	Dram	P11	49,900
Sun	2011/06/13	KYKN	1930	1959	PESTA	60	1	AValue	Maga	P28	43,000
Sun	2011/06/13	MNET	1500	1659	CARTE BLANCHE (R)	60	1	AValue	Real	P30	8,000
Sun	2011/06/13	MNET	1630	1659	SA IDOL 2011 (R)	60	1	AValue	Real	P30	10,000
Sun	2011/06/13	MNET	1930	2029	ROYAL PAINS II (STARTS)	60	1	AValue	Soap	P93	73,000
Sun	2011/06/13	MNET	1830	1859	TDE LAAN	60	1	AValue	Soap	T54	200,500
Sun	2011/06/13	MNET	1930	2029	THE AMAZING RACE	60	1	AValue	Real	P11	124,000
Sun	2011/06/14	KYKN	1930	2029	VALLEI VAN SLUIERS S2	60	1	AValue	Real	P11	49,900
Sun	2011/06/14	MNET	2030	2059	KWELA FLANNERS	60	1	AValue	Sic	P11	32,000
Sun	2011/06/14	MNET	1400	1459	LAW & ORDER: LOS ANGELES	60	1	AValue	Dram	P28	8,000
Sun	2011/06/14	MNET	1500	1559	BROTHERS AND SISTERS V (R)	60	1	AValue	Dram	P28	8,000
Sun	2011/06/15	KYKN	2030	2129	CSI: MIAMI X	60	1	AValue	Dram	P68	60,000
Sun	2011/06/15	MNET	2030	2059	ROER	60	1	AValue	Maga	P22	6,000
Sun	2011/06/15	MNET	1700	1759	HARRY'S LAW (R)	60	1	AValue	Real	P55	52,000
Sun	2011/06/15	MNET	1830	1929	MASTERCHEF AUSTRALIA S2	60	1	AValue	Real	P65	79,000
Sun	2011/06/15	MNET	2030	2129	THE MENTALIST III	60	1	AValue	Dram	T20	30,000
Sun	2011/06/15	MNET	600	759	MORNING LIVE	60	1	AValue	Actu	T52	180,000
Sun	2011/06/19	ETV	1900	2028	PASELLA	60	1	AValue	Maga	T52	92,000
Sun	2011/06/19	MNET	2030	2129	DESPERATE HOUSEWIVES VIII	60	1	AValue	News	E63	79,000
Sun	2011/06/19	MNET	2030	2028	AMERICAN IDOLS	60	1	AValue	Real	P55	136,000
Sun	2011/06/19	MNET	1930	1829	CELEB SE KIND	60	1	AValue	Dram	P11	32,000
Sun	2011/06/17	KYKN	2030	2159	AFRIKAANS MOVIE	60	1	AValue	Dram	P11	32,000
Sun	2011/06/17	MNET	1400	1459	THE MENTALIST III (R)	60	1	AValue	Real	P26	6,000
Sun	2011/06/17	MNET	1500	1559	CARTE BLANCHE (R)	60	1	AValue	Maga	P26	8,000
Sun	2011/06/17	MNET	1600	1659	BLUE BLOODS (R)	60	1	AValue	Real	P26	8,000
Sun	2011/06/17	MNET	2030	2129	LAW & ORDER: LOS ANGELES	60	1	AValue	Dram	P53	43,000
Sun	2011/06/17	MNET	1830	2028	NOOT VIR NOOT	60	1	AValue	Var	T59	220,000
Sun	2011/06/17	MNET	1900	1929	NEWS @ 7	60	1	AValue	News	P34	80,000
Sun	2011/06/18	MNET	1300	1344	MASTERCHEF AUSTRALIA S2 (60	1	AValue	Real	P34	14,000
Sun	2011/06/18	MNET	1430	1514	MASTERCHEF AUSTRALIA S2 (60	1	AValue	Real	P34	14,000
Sun	2011/06/18	MNET	1959	2100	Shutter Island	60	1	AValue	Mov	MM	R 12,000
Sun	2011/06/18	S3	1900	1929	NEWS @ 7	60	1	AValue	News	T25	45,000
Sun	2011/06/18	S3	1930	2129	RAATOUKLE	60	1	AValue	Mov	T32	68,000
Sun	2011/06/19	ETV	2000	2159	AACONDAS: THE HUNT FOR T	60	1	AValue	Mov	E80	124,000
Sun	2011/06/19	MNET	1300	1359	HARRY'S LAW (R)	60	1	AValue	Dram	P34	14,000
Sun	2011/06/19	MNET	1430	1459	TWO AND A HALF MEN VII	60	1	AValue	Sic	P34	14,000
Sun	2011/06/19	MNET	1600	1659	SURVIVOR SA MALDIVES @ S	60	1	AValue	Real	P46	32,000
Sun	2011/06/19	MNET	1800	1859	SA IDOL 2011	60	1	AValue	Real	P64	76,000
Sun	2011/06/19	MNET	1900	2004	CARTE BLANCHE	60	1	AValue	Maga	P80	130,000
Sun	2011/06/19	S3	1100	1159	TOP BILLING (REP)	60	1	AValue	Maga	T15	20,000
Sun	2011/06/19	S3	1200	1359	ISIDINGO OMNIUS	60	1	AValue	Soap	T13	16,000
Sun	2011/06/19	S3	1600	1629	HOOKEO ON TRAVEL	60	1	AValue	Dram	T13	16,000
Sun	2011/06/20	KYKN	1930	1999	PESTA	60	1	AValue	Dram	P11	43,000
Sun	2011/06/20	MNET	1400	1459	DESPERATE HOUSEWIVES @ EN	60	1	AValue	Dram	P26	8,000
Sun	2011/06/20	MNET	1500	1559	CARTE BLANCHE (R)	60	1	AValue	Maga	P26	8,000
Sun	2011/06/20	MNET	2030	2129	THE GOOD WIFE II	60	1	AValue	Dram	P63	73,000
Sun	2011/06/20	MNET	2130	2229	BROTHERS & SISTERS V	60	1	AValue	Dram	P26	8,000
Sun	2011/06/20	MNET	2030	2028	5050	60	1	AValue	Dram	P26	8,000
Sun	2011/06/21	KYKN	1900	1929	ENJUS (ON KYKNET)	60	1	AValue	Dram	P11	49,900
Sun	2011/06/21	MNET	1400	1459	LAW & ORDER: LOS ANGELES	60	1	AValue	Dram	P26	8,000
Sun	2011/06/21	MNET	1500	1559	BROTHERS AND SISTERS V (R)	60	1	AValue	Dram	P26	8,000
Sun	2011/06/21	MNET	1600	1659	ROYAL PAINS II (R)	60	1	AValue	Dram	P26	8,000
Sun	2011/06/21	MNET	2030	2129	CSI: MIAMI X	60	1	AValue	Dram	P26	8,000
Sun	2011/06/21	S3	1930	2029	TOP BILLING	60	1	AValue	Dram	P11	49,900
Sun	2011/06/22	KYKN	1400	1459	THE GOOD WIFE II @	60	1	AValue	Dram	P26	8,000
Sun	2011/06/22	MNET	1435	1600	Shutter Island	60	1	AValue	Mov	MM	R 5,000
Sun	2011/06/22	MNET	1600	1659	HARRY'S LAW (R)	60	1	AValue	Dram	P26	8,000
Sun	2011/06/22	MNET	2000	2029	COUGER TOWN II (STARTS)	60	1	AValue	Sic	P54	50,000
Sun	2011/06/23	ETV	1900	1929	ENJUS PRIME TIME	60	1	AValue	News	E64	96,000
Sun	2011/06/23	MNET	2030	2129	HAWAII FIVE-O (STARTS)	60	1	AValue	Dram	P63	73,000
Sun	2011/06/23	MNET	2130	2229	CSI: NEW YORK VIII	60	1	AValue	Dram	P62	70,000
Sun	2011/06/23	S2	1500	1529	TDE LAAN (REP)	60	1	AValue	Soap	T25	45,000
Sun	2011/06/24	ETV	1900	1929	NIJUS	60	1	AValue	News	T54	200,000
Sun	2011/06/24	ETV	2030	2224	BEHIND ENEMY LINES II: AX	60	1	AValue	Mov	E66	104,000
Sun	2011/06/26	MNET	1610	1600	Shutter Island	60	1	AValue	Mov	MM	R 16,000
Sun	2011/06/30	MNET	1025	1200	Shutter Island	60	1	AValue	Mov	MM	R 5,000

73 R 4,285,000 R 12,000

S.A

Target Market: HHI R10 000+ Age 25+

Universe Size: 3 619,000
 Terrestrial AR's 276
 DStv/Digital AR's 46
 Total AR's 321
 Reach: 71,50%
 Eff Reach3+ 39%
 Ave Freq 4,2

No of spots 224

5
 8

Source Period: 06/01/2011 - 09/04/2011
 Forecast Period: 12/06/2011 - 24/06/2011

ENTERTAINMENT CHANNEL'S	NUMBER OF SPOTS
BBC Lifestyle	40
Mzansi	36
HD Package	50
E-News Prime	15
Rupya Super 15 HD	10
TOTAL COST	181

Stations	Ratecard Rate
stv	R 536,000
Mnet	R 1,582,000
KyKriel	R 416,000
Moyile Magic	R 38,000
SABC 2	R 1,285,000
SABC3	R 497,000
Other DSTV	R 376,000
Total	R 4,862,000

S.A



Vizelum
 [Commission]

From Campaigns	Positioning	Creative	SIZE CM COL	COST PCCM	FLAT RATE	DISC %	DISC R	NET COST Media Val Incl Comm	TOTAL FLAT COST	TOTAL DISC COST	TOTAL NET COST	TOTAL COST TO CLIENT	INS.	Line	Dates	Ins	Dates	
Sunday Press	Sunday Times	Santam Brand	27 10	R 430.00	R 251.100	13.5%	R 33.990	R 217.202	R 251.100	R 33.990	R 217.202	R 217.202	1	1	R 217.202	15		
Report	Upfront RHP	Brand Ad	27 10	R 610.00	R 170.100	5%	R 8.505	R 161.595	R 170.100	R 8.505	R 161.595	R 161.595	1	1	R 161.595	15		
Report	Upfront RHP	Brand Ad	27 10	R 630.00	R 170.100	5%	R 8.505	R 161.595	R 170.100	R 8.505	R 161.595	R 161.595	1	1	R 161.595	29		
Sunday Times Lifestyle	Upfront RHP	Brand Ad	20 8	R 203.00	R 48.480	13.5%	R 6.549	R 41.931	R 203.00	R 6.549	R 196.451	R 196.451	2	1	R 41.931	29		
Sunday World Liberty	Upfront RHP	Brand Ad	20 8	R 172.00	R 27.250	13.5%	R 3.715	R 23.535	R 172.00	R 3.715	R 168.285	R 168.285	2	1	R 23.535	29		
Sunday Press Special Position	Upfront RHP	Brand Ad	10 10	R 1,922.00	R 339.250	13.5%	R 16.782	R 120.408	R 1,922.00	R 16.782	R 1,805.218	R 1,805.218	1	1	R 120.408	22		
Report - Sales	Upfront RHP	Brand Ad	10 10	R 1,500.50	R 76.050	5.0%	R 3.903	R 72.248	R 1,500.50	R 3.903	R 1,496.597	R 1,496.597	1	1	R 72.248	22		
Daily Press	The Times	Santam PL Bonus Campaign	20 8	R 172.00	R 33.920	13.5%	R 4.579	R 29.341	R 172.00	R 4.579	R 167.421	R 167.421	2	2	R 58.682	19-20		
The Times Motor Mania	Upfront RHP	Brand Ad	20 8	R 320.00	R 51.200	13.5%	R 6.912	R 44.288	R 320.00	R 6.912	R 253.088	R 253.088	2	2	R 88.576	20-27		
The Sowetan	Upfront RHP	Brand Ad	20 8	R 292.00	R 46.720	13.5%	R 6.307	R 40.413	R 292.00	R 6.307	R 285.693	R 285.693	2	2	R 80.828	19-20		
The Star Main Body	Upfront RHP	Brand Ad	27 10	R 328.87	R 89.065	12%	R 10.698	R 78.377	R 328.87	R 10.698	R 318.179	R 318.179	2	2	R 93.440	19-20		
Business Report	Upfront RHP	Brand Ad	27 10	R 655.09	R 152.574	12.0%	R 18.309	R 134.265	R 655.09	R 18.309	R 636.781	R 636.781	4	4	R 159.724	16-20		
Business Day	Upfront RHP	Brand Ad	27 10	R 220.00	R 59.400	6.0%	R 3.584	R 55.816	R 220.00	R 3.584	R 216.416	R 216.416	4	4	R 53.032	17-19, 24-26		
State 24 (Berlebsinger/Volksblad)	Upfront RHP	Brand Ad	27 10	R 313.00	R 138.510	7.0%	R 9.686	R 128.824	R 313.00	R 9.686	R 303.314	R 303.314	4	4	R 82.544	18-20, 23-27		
The Daily News	Upfront RHP	Brand Ad	27 10	R 157.26	R 42.460	12.0%	R 5.085	R 37.375	R 157.26	R 5.085	R 152.175	R 152.175	2	2	R 45.480	17-19, 24-26		
Cup Times	Upfront RHP	Brand Ad	27 10	R 164.48	R 50.350	12.0%	R 6.042	R 44.308	R 164.48	R 6.042	R 158.438	R 158.438	2	2	R 45.480	18-20		
Saturday Press	Personal Finance	Santam PL Bonus Campaign	27 10	R 591.31	R 151.544	12%	R 18.186	R 133.357	R 591.31	R 18.186	R 573.124	R 573.124	2	2	R 268.751	21-28		
Magazines	Upfront RHP	Brand Ad	27 10															
Financial Mail	Santam Commercial	PHIC			R 50.960	6%	R 3.059	R 47.901	R 50.960	R 3.059	R 47.901	R 47.901	2	2	R 96.661	20-27		
Finweek	Upfront RHP	PHIC			R 49.200	6%	R 2.952	R 46.248	R 49.200	R 2.952	R 46.248	R 46.248	1	1	R 46.248	20		
Entrepreneur	Upfront RHP	PHIC			R 31.580	5.0%	R 1,579	R 30.001	R 31.580	R 1,579	R 30.001	R 30.001	1	1	R 0			

TOTAL PRESS & PRINT
 (MEDIA VALUE INCLUDING 16.5% COMMISSION)

TOTAL CLIENT COST (excluding 16.5% Agency Commission)

TOTAL FLAT COST	TOTAL DISC COST	TOTAL NET COST	TOTAL COST TO CLIENT	INS.
R 251.100	R 33.990	R 217.202	R 217.202	1
R 170.100	R 8.505	R 161.595	R 161.595	1
R 340.200	R 17.010	R 323.190	R 323.190	2
R 145.440	R 16.634	R 128.806	R 128.806	3
R 55.040	R 7.430	R 47.610	R 47.610	2
R 139.200	R 16.792	R 122.408	R 122.408	1
R 76.050	R 3.903	R 72.248	R 72.248	1
R 97.440	R 1.158	R 96.282	R 96.282	2
R 102.400	R 13.824	R 88.576	R 88.576	2
R 93.440	R 12.614	R 80.828	R 80.828	2
R 178.150	R 21.376	R 156.774	R 156.774	2
R 610.297	R 73.236	R 537.062	R 537.062	4
R 237.600	R 14.256	R 223.344	R 223.344	4
R 554.040	R 38.733	R 515.307	R 515.307	4
R 84.920	R 10.190	R 74.730	R 74.730	2
R 100.880	R 12.094	R 88.786	R 88.786	2
R 301.071	R 36.373	R 264.698	R 264.698	2
R 101.680	R 6.119	R 95.561	R 95.561	2
R 98.400	R 5.904	R 92.496	R 92.496	2
R 31.580	R 1.579	R 30.001	R 30.001	1
R 3,741,564	R 344,645	R 3,396,919	R 3,396,919	42
	9.7%	R 0	R 2,819,791	12

Schedule Performance	HH: MM: SS - Avg 24h
Unreach %	61.4%
Reach %	4.180.000
Frequency	4.45

Schedule Performance	Male Age 35+ Pers Inc R35
Unreach %	76.200
Reach %	80.0%
Reach 3000	241.000
Frequency	5.8

S.A

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.

In the matter between:

SANTAM LIMITED

Applicant

and

DIAL DIRECT INSURANCE LIMITED

First Respondent

JOE PUBLIC (PTY) LTD

Second Respondent

AFFIDAVIT

I, the undersigned,

RAVI JAGA

do hereby make oath and say that:

Two handwritten signatures in black ink are located in the bottom right corner of the page. The first signature is a stylized, cursive name, and the second is a more complex, scribbled signature.

1. I am the legal advisor and Manager: Corporate Legal Services of the abovenamed Applicant. I am duly authorised to represent it in these proceedings.
2. The facts hereinafter set forth are within my own knowledge and belief, save where the context indicates otherwise.
3. I have read the affidavit deposed to by Anel Grobler on Monday 4 July 2011, and confirm the contents thereof insofar as they relate to me and to the Applicant.



RAVIJAGA

I certify that this affidavit was signed and sworn to before me at Cape Town on this the 4th of day of July 2011 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name:

MURRAY JOHN MARTYN BRIDGMAN

Address:

Duquesne Chambers
10 Queen Victoria Street
Cape Town
8001

Capacity

Practising Advocate RSA
ex officio Commissioner of Oaths

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.

In the matter between:

SANTAM LIMITED

Applicant

and

**DIAL DIRECT INSURANCE LIMITED
JOE PUBLIC (PTY) LTD**

**First Respondent
Second Respondent**

AFFIDAVIT

I, the undersigned,

DEAN BLUMBERG

do hereby make oath say that:

1. The facts contained herein are within my own personal knowledge and are both true and correct. Any legal submissions advanced in this affidavit are on the advice of the Applicant's legal representative, which advice I accept as being correct.
2. I was the director who made the cinematographic film which is an advertisement for the Applicant and its products and is described in the founding affidavit as "*the Real McCoy*" which depicts Ben Kingsley walking along the Noordhoek Beach in the Western Cape. I am a South African resident and am domiciled in Johannesburg.
3. The directing and filming of the Real McCoy by me was commissioned by the Applicant through its advertising agency, King James Advertising Cape Town (Pty) Limited ("*King James*"). I was remunerated for executing this commission.
4. I believe that I have no copyright in the Real McCoy and that this vests in the Applicant and/or King James. However, to the extent that I may arguably be considered to be the author thereof, or to be vested with any copyright therein, I hereby assign such copyright to the Applicant.
5. I have seen the Respondent's Yada Yada advertisement. It is clear that it was filmed on the same beach, that the characters are dressed identically, and that it has tried to copy the same camera angles and grading (*viz* the distinctive colour and tone which is a fundamentally distinctive feature of any film) as the Applicant's Real McCoy advertisement in order to make it an identifiable copy or adaptation thereof. Besides

replacing the heads of the characters with talking hands, the Respondent's Yada Yada advertisement is a substantial reproduction of the Applicant's Real McCoy advertisement.

DEAN BLUMBERG

I certify that this affidavit was signed and sworn to before me at _____ on this the _____ day of July 2011 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS