



Ref: L/T-TOP/20/055

Mr. Balkrishna Kaunhye
Managing Director
TOP FM Ltd
7th Floor, The Peninsula,
2A, Falcon Street,
Caudan
Port-Louis

5 June 2020

Dear Sir,

**RE: BREACHES IN THE NEWS OF 07H00 AND 08H00 BROADCAST BY TOP FM LTD
ON 17 MAY 2020**

SUSPENSION OF LICENCE TOP FM LTD

1. TOP FM Ltd is the holder of a **PRIVATE COMMERCIAL FREE TO AIR FM RADIO BROADCASTING LICENCE** (the "Licence") issued by the Independent Broadcasting Authority, (the "Authority"), pursuant to the provisions of the Independent Broadcasting Authority Act.
2. The Licence was renewed by the Authority for the period 13 December 2018 to 12 December 2021.
3. Clause 9 of the Licence provides for suspension of the Licence and reads as follows:

"9. SUSPENSION

9.1 Notwithstanding Clause 8 above, where the Authority is satisfied that –

- a. the Licensee has failed to start its operation within 6 months of the issue of this Licence or within such additional period as may be allowed by the Authority;**
- b. the Licensee has ceased its operation under this Licence;**
- c. the Licensee has given the Authority information which is false or misleading in a material particular;**

d. the Licensee has failed to comply with the Code of Conduct specified in the Second Schedule to the Act (ANNEX A);

e. it is in the public interest to do so,

it may suspend the Licence."

4. TOP FM Ltd, like any other licensee, is also bound by the terms of its licence and by section 21(6) of the Independent Broadcasting Authority Act which makes it **mandatory** for it to comply with the terms and conditions of its licence. This has statutory underpinning as section 21(6) of the Independent Broadcasting Authority Act provides that:

"A licensee shall comply with the terms and conditions of a licence."

5. It is clear that the Code of Conduct for Broadcasting Services (see clause 9.1(d) of TOP FM Ltd.'s licence) has, as a matter of law, to be complied with. A breach of the Code of Conduct for Broadcasting Services, is also a breach of clause 9.1(d) of TOP FM Ltd's licence. TOP FM Ltd's licence, in clause 9.1(d), clearly specifies that such a breach may lead to a suspension of the licence.
6. On 17 May 2020, TOP FM Ltd broadcast the following extract in its News bulletins of 07h00 and 08h00:

"Avi Gopee:

'Kaushik Jadunundun est un pyromane communal toléré par ce gouvernement', le leader de l'opposition est revenu sur les pouvoirs additionnels qui seront accordés à la police à travers la Quarantine Act. Dans son summing-up, le Premier ministre a évoqué le cas Rachna Seenauth. Pravind Jugnauth en a fait une affaire personnelle alors que les propos de Kaushik Jadunundun qui étaient dangereux soutient le Dr. Arvin Boolell avant d'ajouter que le pays se dirige vers une dictature.

Arvin Boolell :

... dire enn mamzelle ki enn blague lor so blog, lor média et inn appel li 'P'. Li dire, be si ine dire toi 'P'. Mo dire be sa zafer la combien fois nous gagner sa. Ena dire moi ... ena dire moi bon kitchose. Mo dire li pas prend sa compte. Linn prend sa linn fer sa vine enn chose personnel. Et li pe koz sa dans parlement. Apres li dire ki été 'P', Non dans enn problème d'urgence sanitaire. Kot ou bisin ena enn ti seuil de tolérance. Et mo croire Patrick ki ti dire sa dans so intervention, li dire be si Trump ou bien Boris Johnson agir, be sa zot pou block tous dimoun... aster. Si le Premier Ministre ti ena enn l'esprit équitable, de fairness li ti pou prend seki Jadunundun ine dire. Parceki seki Jadunundun ine dire, enn membre de l'ICTA, enn proximité avec le MSM, li ti capav enflamme sa pays la. C'est enn pyromane communale toléré par ce gouvernement. Nou dan enn pays kuman Maurice kot gagne bann réactions ... primaire, mo comprend kan Père Labour pe réagir avec raison parceki nous bisin protège la nation mauricienne. ... pas la, li ti dire vote ce gouvernement la.



Tousa l'injustice ki pe ena la, Grégoire pa kozer. Et seki nous bisin réaliser, nous pe rent dans enn situation dictatorial.

Avi Gopee :

Pour rappel, Kaushik Jadunundun, ancien membre de l'IBA et proche du MSM avait tenu des propos humiliants à l'égard de Jameel Peerally, un activiste social et des députés du parti Travalliste.

7. The Authority, by way of e-Board Resolution No.15 of 2020 circulated on **20 May 2020**, considered the above item and was of the considered view that the extract broadcast by TOP FM Ltd, which is set out at paragraph 6 above, was in breach of paragraphs 3(1), 3(2), 3(4) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act. Paragraphs 3(1), 3(2), 3(4) and 3(5) of the Code of Conduct for Broadcasting Services provide as follows:

"3. News

- (1) *Broadcasting licensees shall report news truthfully, accurately and objectively.*
- (2) *News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by -*
 - (a) *distortion, exaggeration or misrepresentation;*
 - (b) *material omission; or*
 - (c) *summarization.*
- (3) ...
- (4) *Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.*
- (5) *Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention."*

8. By way of letter dated **22 May 2020** (Ref: L/T-TOP/20/050), TOP FM Ltd was requested to show cause, by **28 May 2020** at noon, as to why it should not be sanctioned for breaches of paragraphs 3(1), 3(2), 3(4) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act.



9. The Authority has noted that upon receipt of the letter dated 22 May 2020, TOP FM Ltd broadcast apologies on 22 May 2020 and 23 May 2020 in several of its news bulletins. For instance, apologies were broadcast on 22 May 2020 at 14:00 hrs; 15:00hrs and 17:00hrs as follows:

“Jessica / Cedric Longevin:

Et cette précision de Top FM, le 17 mai 2020, Top FM a diffusé dans ses bulletins d'information de 7 heures et 8 heures les propos du leader de l'opposition concernant un post sur Facebook dont l'auteur était Kaushik Jadunundun. Dans sa déclaration, monsieur Arvin Boolell s'est référé à Kaushik Jadunundun comme membre de l'ICTA. A la fin de ces bulletins, notre présentateur Avi Gopee a fait mention que Kaushik Jadunundun était membre de l'IBA, ce qui n'est pas exacte. L'IBA a aujourd'hui attiré notre attention sur cette erreur et nous tenons à faire une rectification immédiate et sans réserve selon les dispositions de la section 3 (5) du Code of Conduct for Broadcasting Services de l'IBA Act. Effectivement, Kaushik Jadunundun était membre de l'ICTA et pas de l'IBA. Top FM présente ses excuses à l'IBA.”

On 23 May 2020, apologies were aired at around 07h17 and 8h25 as follows:

“Vishwanee Delmege:

Précision de Top FM, le 17 mai 2020 Top FM a diffusé dans ses bulletins d'information de 7 heures et 8 heures les propos du leader de l'opposition concernant un post sur Facebook dont l'auteur était Kaushik Jadunundun. Dans sa déclaration monsieur Arvind Boolell s'est référé à Kaushik Jadunundun comme membre de l'ICTA. Et à la fin de ses bulletins, notre présentateur a fait mention que Kaushik Jadunundun était membre de l'IBA, ce qui n'est pas exacte. L'IBA a attiré notre attention sur cette erreur et nous tenons à faire une rectification immédiate et sans réserve selon les dispositions de la section 3 du code of conduct for broadcasting services de l'IBA Act. Effectivement Kaushik Jadunundun était membre de l'ICTA et pas de l'IBA. Top Fm remercie l'IBA d'avoir attiré son attention sur cette erreur de frappe involontaire du journaliste et présente ses excuses à l'IBA.”

10. On 28 May 2020, Me Ashok B. Radhakissoona, Barrister-at-Law, whose services have been retained by TOP FM Ltd, replied to the Authority's letter dated 22 May 2020 (L/T-TOP/20/050). The reply is at **ANNEX 1**.
11. The reply of TOP FM Ltd as well as the breaches referred to in paragraph 6 above were considered by the IBA Board by e-Board Resolution **No. 20 of 2020** circulated on 4 June 2020.
12. After having considered the explanations of TOP FM Ltd, the Authority is not satisfied with the explanations of TOP FM Ltd and is of the considered opinion that TOP FM Ltd has breached paragraphs 3(1), 3(2), 3(4) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the Independent

Broadcasting Authority Act. The Authority notes that the letter of Me. Radhakisson admitted the inaccurate statement broadcast by TOP FM Ltd.

13. The IBA has further considered the point of Me. Radhakisson about section 4(l) of the IBA Act and is of the view that this section does not limit the powers of the Authority in view of:

“(a) section 4(i)(iii) which mandates the Authority to:

(i) ensure that broadcasting services –

(i)...

(ii)...

(iii) are impartial and accurate;”

(b) section 4(h) which mandates the Authority to “set acceptable standards for programmes and advertising and monitor compliance with those standards;” [Underlining is ours]

The Authority is further of the considered view that it can act, *proprio motu*, in case the Code of Conduct is breached by a licensee or if a licensee fails to comply with its licence conditions.

14. The Authority highlights that a breach of the Code of Conduct for Broadcasting Services is a matter which is to be taken seriously as section 21(7) of the Independent Broadcasting Authority Act provides that licensees “shall carry out its activities in compliance with the code of conduct specified in the Second Schedule.” [underlining is ours]. The Authority further highlights that the word “shall” is to be read as being imperative (vide section 5(4)(a) of the Interpretation and General Clauses Act, as judicially considered and applied in the case of Ng Kwet Leong v Medical Council of Mauritius 2019 SCJ 1.

15. The extract broadcast by TOP FM Ltd on 17 May 2020 in its news bulletins of 07h00 and 08h00 is considered by the Authority as breaching the Code of Conduct for Broadcasting Services as follows:

(a) as being inaccurate (i.e it was reported that “Pour rappel, Kaushik Jadunundun, ancien membre de l’IBA”); Mr. Kaushik Jadunundun has never been a Board Member of the Independent Broadcasting Authority (breach of paragraphs 3(1) and 3(2) of the Code of Conduct for broadcasting services, see underlined parts below);

“3. News

- (1) **Broadcasting licensees shall report news** truthfully, **accurately** and objectively.
- (2) **News shall be presented in the correct context** and in a balanced manner, **without intentional or negligent departure from the facts, whether by—**
- (a) distortion, exaggeration, or **misrepresentation**;
 - (b) material omission; or
 - (c) summarisation.

- (b) further, given the words of the Leader of the Opposition to the effect that Mr. Jadunundun was a Board member of the ICTA, there was a clear doubt as to the correctness of the underlined words and TOP FM Ltd had a duty under paragraph 3(4) of the Code of Conduct for Broadcasting Services to verify that news. This, TOP FM Ltd, clearly failed to do (see underlined part of paragraph 3(4) of the Code of Conduct for Broadcasting Services below); and

“3(4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.”

- (c) finally, no rectification of news which was incorrect in a material respect (Mr. Kaushik Jadunundun has never been a Board Member of the Independent Broadcasting Authority) was done forthwith, **without reservation or delay** by TOP FM Ltd. This was a binding requirement, not complied with, by TOP FM Ltd under paragraph 3(5) of the Code of Conduct for Broadcasting Services. (See underlined part of paragraph 3(5) of the Code of Conduct for Broadcasting Services below); The above report was rectified **only** after TOP FM Ltd received the Authority's letter to show cause, in writing, by **28 May 2020 at 12:00 hours**, as to why TOP FM Ltd should not be sanctioned for breach of paragraphs 3(1), 3(2), 3(4) and 3(5) of the Code of Conduct for Broadcasting Services. The Authority's letter did not request TOP FM Ltd to broadcast the apologies and rectification.

“3(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.”

16. The Authority is of the considered view that the suspension of the Licence of TOP FM Ltd is warranted given the breaches of the Code of Conduct for Broadcasting Services set out in this letter and explained, in detail, in the Authority's correspondence to TOP FM Ltd.
17. The Authority took note that the maximum period for the suspension of a licence is 21 days (vide section 25(2)(b) of the Independent Broadcasting Authority Act). The Authority has considered this matter very anxiously. In deciding the length of suspension to be given to TOP FM Ltd, the Authority, as an independent regulator, is fully alive to the fact that the suspension of a licence is a not a matter which may be treated lightly. A suspension of a licence prevents the broadcaster from broadcasting and it reduces the number of voices being heard and the range of programmes available to the audience. The Authority considers that the threshold to suspend a broadcaster's licence is, therefore, high.
18. The Authority has considered:
- (a) the nature of the breaches;
 - (b) the explanations of TOP FM Ltd.;
 - (c) the applicable law;
 - (d) TOP FM Ltd's licence; and
 - (e) previous conduct by TOP FM Ltd in not complying with the IBA Act, the IBA Code of Ethics and written warnings of the Authority (letters of the Authority with their Annexes dated respectively **8 March 2012 (ANNEX 2)** and **7 May 2018 (ANNEX 3)** are attached
- before coming to a conclusion on this matter.
19. The Authority wishes to place on record that the rectifications broadcast by TOP FM Ltd on **22 May 2020** and **23 May 2020**, weighed heavily in favour of TOP FM Ltd in determining the length of suspension to be meted out to TOP FM Ltd.
20. The Authority has further applied the test of proportionality to decide on the length of suspension to be meted out to TOP FM Ltd. The Authority is of the considered view that that the breaches committed by TOP FM Ltd justify the suspension of TOP FM Ltd's licence for **TWO hours** out of a maximum number of 21 days suspension which could have been given to TOP FM Ltd by the Authority (vide section 25(2)(b) of the Independent Broadcasting Authority Act). Unlike the stand taken by the Authority in 2012 against TOP FM Ltd, where the Authority had then threatened TOP FM Ltd, *inter alia*, with **revocation** (see **ANNEX 2**) of its licence, the Authority has not even considered the possibility of revocation of TOP FM Ltd's licence for this particular breach.

21. The particulars of the suspension period decided by the Authority in respect of TOP FM Ltd are as follows:

Date suspension starts	:	6 th June 2020
Time suspension starts	:	09:00 hours
Date suspension ends	:	6 th June 2020
Time suspension ends	:	11:00 hours

22. The effect of the suspension is that during the suspension period TOP FM Ltd should not broadcast any material.

23. TOP FM Ltd. is further directed by the Authority to give public notice of this suspension **prior** to it taking effect.

24. TOP FM Ltd is further reminded that paragraph 35.1 of its licence provides as follows:

"35. BASHING

35.1 The Licensee shall refrain from using its air to criticise decisions or directions/directives issued to it by the Authority with a view to discredit the latter."

SIGNED FOR AND ON BEHALF OF THE INDEPENDENT BROADCASTING AUTHORITY.



K. Ramphul
Acting Director

ASHOK. B. RADHAKISSOON

ANNEX 1

BARRISTER at LAW

Suites: 606-607 Sterling Tower-14 Poudrière Street Port Louis

Tel: +230 245 6996/Res : 230 6763692

Mobile: +230 5256 4348

Email: ashok@afrenic.net

The Acting Director
Independent Broadcasting Authority
Dear Sir,

Re : Your letter bearing reference -L/T-TOP/20/050

I write on behalf of TOP FM Ltd and I refer to your letter dated 22 May 2020
Without prejudice to the other averments as found below, the following preliminary objection is being raised on behalf of TOPFM LTD.

Preliminary point in law.

Section 4(l) of the IBA Act provides that the .." Authority shall inquire into public complaints against any licensee and take any action it thinks appropriate".
It is submitted, in terms of the above section of the IBA Act that it is not part of the object of the Authority to inquire into its own complaint as such a complaint is not a public one against any licensee.

As such the TOP FM Ltd is not bound to comply with the last sub paragraph of paragraph (6) of your letter dated 20 April 2020.

In addition to the above preliminary legal point, TOP FM Ltd , as the licensee does not dispute the fact that it aired the text referred to in your letter under reference.

It is submitted on behalf of TOP FM Ltd that what it is being reproached to it is the result of a genuine mistake which was not picked up by its upstream process which vetted the text.

The upstream process through which the impugned text went through

- (a) As regards the news item referred to in your letter, the text was written by a journalist, Ms Harisah Peeralee, who was a trainee under the Youth Employment Program whose training lasts for 10 months and would in effect lapse very shortly. She has explained the circumstances in which the mistake occurred.
- (b) The text was submitted to Senior News Editor Michael Jean Louis who did not detect the inaccuracy.
- (c) Mr Raj Jugernauth, secretaire de redaction (correcteur) has explained in writing that the text reached him already corrected by Michael Jean Louis, and he did not, unfortunately, look at it with the rigour required.
- (d) Mr Habib Mosaheb also examined the text and did not pick up the wrong statement of fact.

The above facts are brought to your attention to show that the necessary mechanism exists within the newsroom at TOPFM to ensure that mistakes or inaccuracy are spotted and rectified.

It is a matter of regret that the mistake, subject matter of your letter did not catch the attention of the employees mentioned above.

[Statements from the above named may be produced if it is deemed necessary.]

TOPFM Ltd has already tendered its apology, on air, to the Authority via its news bulletins on no less than five occasions.

- (i) On 22 May 2020 (on the very day your letter was received) during its news bulletins at 1400hrs, 1500 hrs and 1700 hrs.
- (ii) On 23 May 2020 during the news bulletin at 0700hrs and 0800hrs.

In all these news bulletins, TOPFM stated that it was immediately (after its attention to the mistake was drawn by the Authority) and without any reservation rectifying the mistake made as it is enjoined by section 3(5) of the IBA's Code of Conduct for Broadcasting Services.

TOPFM relies on the provisions of section 3(5) of IBA's Code of Conduct for broadcasting services to submit that this text does not rule out that broadcasting services may make mistakes or be inaccurate in their news bulletins under the proviso that once the mistake /inaccuracy is seen, the broadcast service provider is under the obligation to rectify same forthwith.

As expatiated above, the mistake /inaccuracy came to the attention of TOPFM on 22 May 2020 via your letter. It hastened to rectify as explained.

It is further submitted that TOPFM has discharged this obligation to rectify forthwith, the mistake/inaccuracy.

TOP FM, in the light of the foregoing, verily believes that it has acted within the province of section 3(5) of the Code of Conduct for broadcasting services, once the mistake /irregularity was pointed out to it.

For and on behalf of TOPFM



Ashok B. Radhakisson

Counsel for TOPFM

This 28 May 2020.



Independent Broadcasting Authority

ANNEX 2

Ref: ADM/TFM/LIC/12/078

Mr Balkrishna Kaunhye
Chairman and CEO
Top FM Ltd
Port Louis.

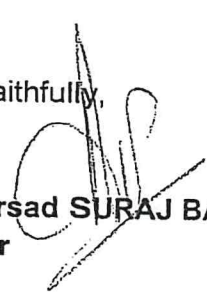
08 March 2012

Dear Sir,

Following the meeting held on 08 March 2012, whereby you took cognizance of the suspected breaches identified by the Authority, you are hereby being strongly advised to strictly comply with the IBA Act and Codes, failing which, the Authority will have no alternative than to either suspend or revoke your licence.

Enclosed is a list of potential breaches for the period 09 February 2012 to 29 February 2012.

Yours faithfully,


Dulliparsad SURAJ BALI
Director

CC: Mr Husseinjee PATEL
Representing Majority Shareholders

(Encl.)

Lever Maurice on TOP FM :**Potential Breaches by TOP FM**

NO	DATE	TIME	REPLYING TO CALLER	JIMMY'S INTERVENTION	SUSPECTED BREACH
1	9.2.12	0709	Anncy	Be sa meme ki mo pe dir, pe gaspiy larzan public.Pa pe servi larzan public a bon escient	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
2	9.2.12	0717	Sanjay: Construction pont par bane VRS, vieux bolom	Sa dapre moi ena anguille sous roche. Bizin guete ki fer le pe tarder Dir moi ene coup, pe gaspiy larzan public.Parfois nu riye, nu mazine ki point situation ine degrader, pa facile	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
3	9.2.12	0724	Navin : Incident Phoenix	Mo esperer ki PM osi pran compte ban maulana kip e dir ki PM bizin deman excuse. Mo esperer ki PM kapav certainement done bane reponse ar ban maulana ki fine joine hier, et pe decider ki li bizin presente excuse lor ban propo ki line tenir au college Aleemiah.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
4	10.02	0712	Prem: Voyage	Nou pa pu ale autan	Section 2.3 of the

			dans helicoptere	loin kisa pu ale revey les morts zordi kan ene dimoun ti fer so lichien voyage par helicoptere. dans sa cas ki ou pe dir par rapor au gran argentier la, dapres explication kifine done, li ti envi get ki ampleur developpement. Nu nou kapav get li depi enba, be li li pane capave, line bizin pran helicoptere pu li get li depi lahaut, pu li trouve li, comprend la. Nou ti dimoun, parfois nou monte lor montagne nou get developpement mais zot zot bizin pran helicoptere, ki nou pou fer papa ?	Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
5	11.02. 12	0952	-	Lote fois la ene dimoune ine dire dan Koze Do mo Pep, mo profiter puisque ou la PSC ce n'est pas li ki nomme dimoune. Li zis fer selection et apres li envoye sa bane ministeres ek bane departements , c'est la bas ki decide sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
6	15.02. 12	0728	Ishwar : Ti erna ene personnage , li ti dir ki polilik ek religion marse ensam. Li extra faux. Dan Ramayan, dan Bagwat Geeta, kote fine ekrir sa ?	Voila, lapel est lance ce matin a Somduth Dulthumun pu done nu sa bane explication la, mais ou cone sa bane president socio- culturels la, c'est zotte meme ki nomme Chairman, ambassadeur et beaucoup kitchose ki zot faire, c'est pou zote propre lavantage.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
7	16.02. 12	0715	Sunil : La misere/la vie chere	Mo croire nou pou ale mange manioc, patate la ein, kot vine arriver la. Mauvais misere, mauvais misere, sagrin ou papa, sagrin ou, sagrin sa bane souffrance ki lepepe	Section 4 (2) Code of Conduct for Broadcasting Services – "Comment shall be presented in such manner that it appears clearly to

				sa pays la pe vive.	be comment, and shall be made on facts truly stated or fairly indicated and referred to"
8	16.02.12	0726	Mala : So tifi gradue l'Inde, pas gagne travail dans gouvernement	En principe, ou tifi pane cole l'affiche + Dans biro PM, erna dirigeants ki declare impe plisse ki PM.. + Numero 5, pli dife encore, pas gagne rencontre laba.	Section 4 (2) Code of Conduct for Broadcasting Services – "Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to" Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
9	16.02.12	0728	Sunil : Critik MBC	Mo compran ou degout par rapor seki pe passer. C'est pourquoi depi certes boukou l'annee pe dir bizin liberalise sa sekter la, na pa donne a bane ti camouade, bane ki copain ki pe vine atass ou lasse soulier gramatin tanto. Donne sa bane dimoune ki kapave faire l'information couma TOP FM. Donne nou sa, ou guet couma nou revolutionne sa zistoire la. Tellement zote ecouter dans MBC, zote copier, zot copier villain copier. Sa si ti Cambridge sa, zote tou ine fail, gramatin ine mette dans prison sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"

10	17.02.12	0727	Prem : Probleme environnement dans Baie du Tombeau	Parfois nou demande nou si Baie du Tombeau li forme parti dan circonscription NO. 5. Kan nou imagine l'etat la route, bane infrastructure.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
11	20.02.12	0721	Anonyme : Ex-servicemen	Appel lancer un direction de Xavier Duval. Get ene coup Xavier Duval ki ou capabe fer pou sa bane ex-servicemen la. Si bizin pran helicoptere, ale get zot situation .Fer kitchose pou zote.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
12	22.02.12	0706	Raj : 2 garcon erne degre, Pa gagne travail	To colle l'affiche papa ?	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
13	27.02.12	0709	Rajesh : Critik MBC + Sharonne	Bizin casse monopole MBC. Sa meme ki fer domination a la population. Mo conner ca amertume la lors ou leker. Mo dire ou fer la priere pou gagne ene television privee madame.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
14	28.02.12	0710	Vanessa : Probleme de l'eau dans No.5	Delo pe gaspiller depi 30 jours dans No. 5. Nou pa pu fer Ramgoolam so colere lever kan li tane sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are

					expected to moderate and not to vehicle their personal opinion (s) on air"
15	29.02.12	-	Rajen : Dans sa pays la, Premier minis le limeme, li pe protege tout so bane dimoune. Par exemple so bane conseillers, erna conseillers kine fer crime, ki pe travail are li : +Minis protege zotte qualite..	Mo croire ki nou ine comprend ki ou pe rode dire. Li impe dans la pratik politik Maurice ki bane la travail pou zotte agent mais zotte supposer travail pour le peuple en meme temps.Mo pa croire ki PM pe protege bane criminel.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
16	29.02.12	0721	Rajiv	D'accord avec Remake 2000. Mo garcon erna Masters,perna travail. SAJ bizin desane	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"

Broadcaster: Top FM
Program : HARD TALK
Date: Wednesday 29 February 2012
Time: Around 18h25

Caller : Un-named

Bonsoir, mo question couma banne kreol pe ramasse beze dans sa pays la; dan tous biro nou trouve tou hindou, pli boucou hindou. Kot nou ale kreol pe ramasse beze. Mo question combien kreol pe ramasse beze dans sa pays la. Dan tou biro ki nou ale nou pe ramasse beze, Lopital nou pe ramasse beze, MBC nou pe ramasse beze ek zot television, CWA nou pe ramasse beze encore

Sunil Dwarkasing : avant mo remercie sa camarade la pou so question.....

Possible Breaches by TOP FM RADIO

(i) **Section 37 (1)(g) IBA Act**

"Any person who otherwise contravenes any provision of this Act, shall commit an offence"

(ii) **Breach of Section 1(d)(ii) Part A – General Conditions of Licence**

"The Licensee shall so conceive and schedule its broadcasting services as to ensure that the services do not encourage or incite or racial hatred, or lead to disorder or offend public feeling"



08 mars 2012

Communiqué de Presse.

L'Independent Broadcasting Authority a convoqué cet après-midi les responsables de Top FM pour un dernier rappel à l'ordre suite à des dérapages notés durant le mois de Février. Des abus potentiels à l'antenne qui vont de la haute diffamation à l'incitation à la haine raciale. L'IBA a ainsi fait savoir aux responsables de TOP FM qu'au cas où une amélioration n'est pas notée à l'antenne, la licence de cette chaîne de radio sera soit suspendue ou révoquée.

L'IBA a également donné un avertissement à Radio One pour avoir enfreint les directives de l'IBA dans le cadre des élections à l'Assemblée Régionale de Rodrigues en diffusant le jour même des élections, des extraits d'une campagne porte à porte menée par Monsieur Johnson Roussety, leader du FPR dont des candidats étaient en lice.

Le Conseil d'Administration de l'IBA a aussi demandé à la Rédaction de Radio Plus de rapporter plus fidèlement les Court Records pour éviter de diffuser des informations qui ne sont pas exactes.

L'IBA a aussi demandé à la Direction de la MBC de veiller à ce que ses programmes sur Radio Mauritius n'encouragent pas la violence chez les enfants.



ANNEX 3

Ref:L/T-TOP/18/047

Mr Balkrishna Kaunhye
Managing Director
Top FM Ltd
7th Floor, The Peninsula
2A Falcon Street
Caudan
Port Louis.

The document has been edited
to protect the identity of
a minor.
KR

07 May 2018.

Dear Sir,

Re: Potential breach by Top FM on 04 April 2018 – News Bulletin of 17h00

Please refer to the Authority's letter dated 06 April 2018 (L/T-TOP/18/034) and your reply dated 09 April 2018.

I am directed to inform you that the IBA Board at its meeting of 02 May 2018 considered the reply of Top FM dated 09 April 2018 in connection with the news item broadcast on 04 April 2018.

The Board views with much concern the breach committed by Top FM on 04 April 2018, albeit without intent but as a result of negligence.

Top FM Ltd is hereby being informed that any recurrence will be dealt with seriously by the Authority.

Yours faithfully,

K. Ramphul
Acting Director

9 April 2018

The Acting Director
The Independent Broadcasting Authority
Level 2, The Celicourt
6 Sir Celicourt Antelme Street
Port Louis

Attn : Mr K. Ramphul

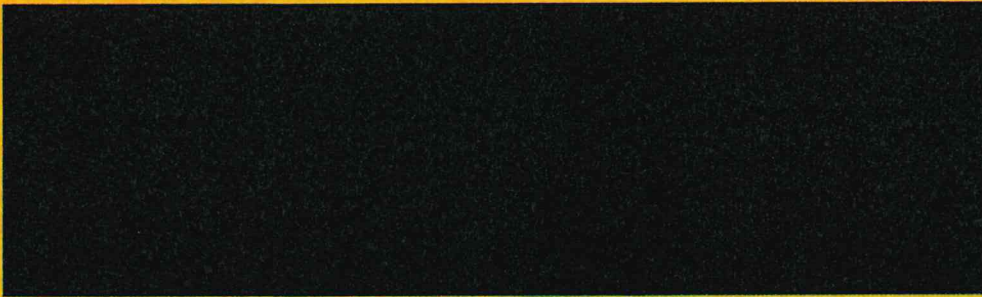
Dear Sir,

Re : L/T – TOP/18/034

Your abovementioned letter refers.

At the very outset we wish to assure you about our unflinching commitment to comply with the IBA Act and all other relevant legislations, including the code of conduct governing the written and oral press.

In reply to your letter, we wish to apprise you of the following :

1. The matter raised a lot of speculations in the public when the communique was first published by La Sentinelle Ltee, along with a post at 15H13 on 3rd April 2018 on L'Express.mu site (Annex 1) which already established the link with the victim. Speculations on the nature of the allegations and the victim was already in the knowledge of several newsrooms, including ours.
2. On the 4th April 2018 the morning edition of L'Express print newspaper on page 4 published the communique. (Annex 2)
3. 
4. The manner on how to treat this matter has been subject to lengthy discussions among our senior journalists. The duty to inform in public interests was already established.


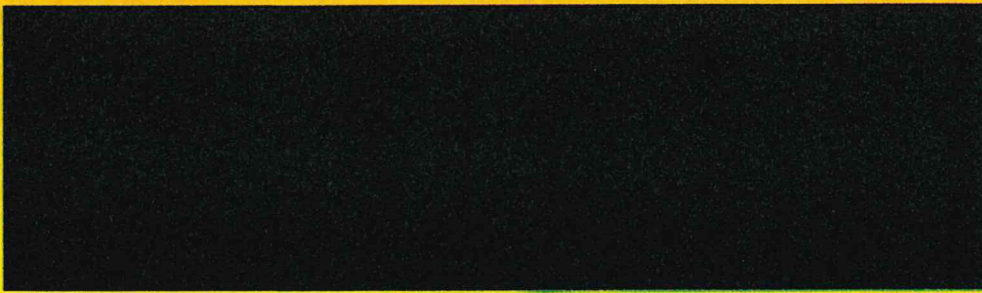


1st Floor, The Peninsula, 2A Falcon Street, Capotrain, Port Louis. Tel: (220) 213 2121. Tel: (celco) (210) 213 8866. Fax: (220) 213 2222. Email: top@topradio.mu. Website: http://www.topradio.com

RECEIVED
09 APR 2018



Fresh air you can hear

5. However, as hours were passing-by, we were informed from reliable sources the information that there were manoeuvres to cover-up the matter and pressure was exercised on the mother for her to withdraw her application before the Supreme Court.
6. 
7. In the same breath, the father is not a common man. He is a public figure and is considered in the industry to have a powerful pen with a powerful network which has brought down within less than 6 months between September 2017-March 2018 :
 - i. An Attorney-General by using the confessions of a person who finally turned out to be unreliable and untrustworthy.
 - ii. A Vice-Prime Minister.
 - iii. A President of the Republic of Mauritius at such a time, a couple of days before the country was going to celebrate a landmark moment in its history 'the 50th Independence anniversary'.
8. There was also a consensus that the father should benefit from the presumption of innocence until found guilty by a court of law.
9. In the circumstances, we were guided by the following :
 - a. The duty to inform in public interests.
 - b. The duty not to practice the "omerta" and protect a "confrère" by concealing a matter of such importance and amplitude.
 - c. The duty to protect the most vulnerable in this situation, which were the mother and the 3 year old child.
 - d. That the rights of the child be protected regardless of the actions of her parents.
 - e. That justice should not be denied to the child.
10. This news item was prepared based on the affidavit to be as truthful, accurate and objective as far as possible. The version of the father has been sought on several occasions but to no avail.
11. 

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explanations from the journalist Marc Pierre). The news was broadcasted on 4th April 2018 at 17H00. However, one need to listen very carefully to be able to figure out the name of the child in the audio as it is associated with a pronoun.



12. As soon as the mistake was noticed it was corrected immediately and when rebroadcasted at 19H00 the text did not contain the name of the child. We need to stress here that the audio with the name of the child associated with a pronoun is not available anywhere on our on-line platforms.
13. As described above, we have reasonably taken necessary steps to comply with paragraph 3 (7) of the Code of Conduct for Broadcasting Services. We would like to reassure the Authority that we are unflinchingly committed to comply with the legislation and Code of Conduct. As such we have taken several steps to tighten our internal procedures to avoid such mistakes to happen in future, albeit by inadvertence.
14. In the present situation, the child being 3 years old cannot give her consent as stipulated in paragraph 3(7) of the Code of Conduct. While the father is presumed innocent until found guilty we nevertheless have an affidavit sworn by non-other than the mother of the child. We had a duty to broadcast the news as elaborated under paragraph 9 above and by virtue of paragraph 3.4.6 of the Code of Ethics which inter-alia provides that :

"Where consent has not been obtained or actually refused, only overriding public interest can justify a decision to go ahead."
(emphasis added)

15. As a result of such broadcast, the Ministry of Gender Equality, Child Development and Family Welfare has acted promptly and the matter was taken so seriously that the Child Development Unit (CDU) made a report to the Police for ***"SEXUAL ASSAULT IN BREACH OF SECTION 11 and 14 OF THE CHILD DEVELOPMENT ACT"*** in connection with this matter at Terre Rouge Police Station ***late at night on 4th April 2018 at 23H45*** OB No 3348/2018. (Annex 4). (emphasis added)
16. We cannot recall in history on which occasion the CDU, since its set-up, has acted with such promptitude ! At least as far as we know, they have never reacted like this for a common man ?
17. As a matter of fact, the relevant authorities have taken necessary steps to protect the child and her rights.
18. On the 5th April 2018, when we received the communique from the Ombudperson for Children's Office we acted promptly to issue our communique to state clearly our position. (Annex 5).
19. Later during the day when the Judge N. Matadeen in her order requested the press to exert caution when treating this matter, we issued another

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communiqué (Annex 6), stating that we have removed all details regarding the news broadcasted from our website also. We need to confirm here that the name of the child has never been published on any of our on-line platforms.

20. From the above, we submit that in light with what are laid down in paragraph 3(7) of the Code of Conduct for Broadcasting services and paragraph 3.4.6 of the Code of Ethics there has not been any breach on our part.

21. Despite the reasonable control system already in place, we have nevertheless as mentioned above, taken action and several steps to tighten our internal control :

- a. The texts are as from now not recorded prior to have been vetted by two senior most and experienced journalist.
- b. The records in sensitive situations as this one has to be vetted by at least one senior journalist other than the ones who vetted the texts.
- c. Even if we understand the pressure under which he was performing his duty the journalist/newscaster has been warned for negligence.

We trust that the foregoing answers your concern and we remain at your disposal for any other explanations/clarifications you may require.

Yours truly,

Balkrishna Kaunhye
Managing Director

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09 APR 2018



1st Floor, The Peninsula, 2A Falcon Street, Candian, Port Louis. Tel: (230) 213 2121. Tel: (Sales) (230) 213 6866. Fax: (230) 213 2222. Email: tobin@topfm.mu. Website: <http://www.topfmradio.com>

Ref: L/T-TOP/18/034

Mr. Balkrishna Kaunhye
Managing Director
Top FM Ltd
7th Floor, The Peninsula
2A Falcon Street
Caudan
Port Louis

06 April 2018

Dear Sir,

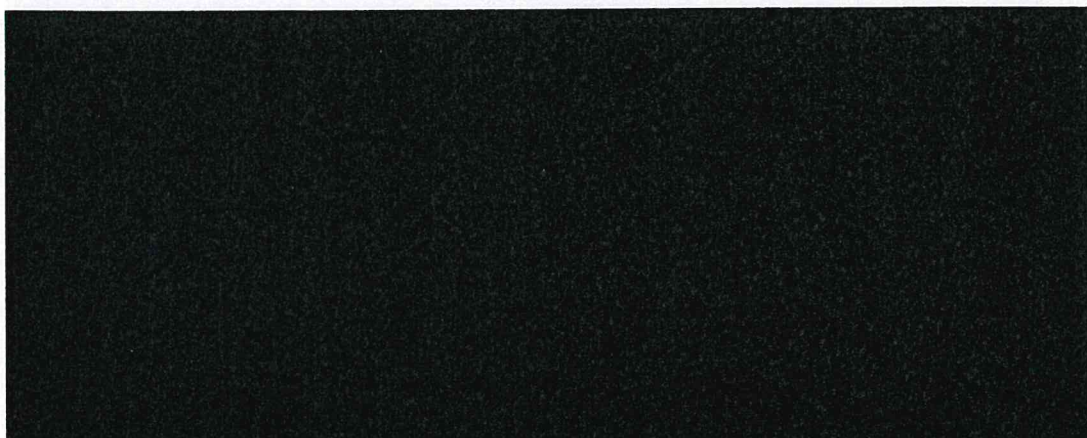
Re : Potential breach by Top FM on 04 April 2018

The Authority has noted with serious concern a clear and blatant breach of Paragraph 3(7) of the Code of Conduct for Broadcasting Services by your Radio station.

Paragraph 3 (7) of the Code of Conduct for Broadcasting Services provides:

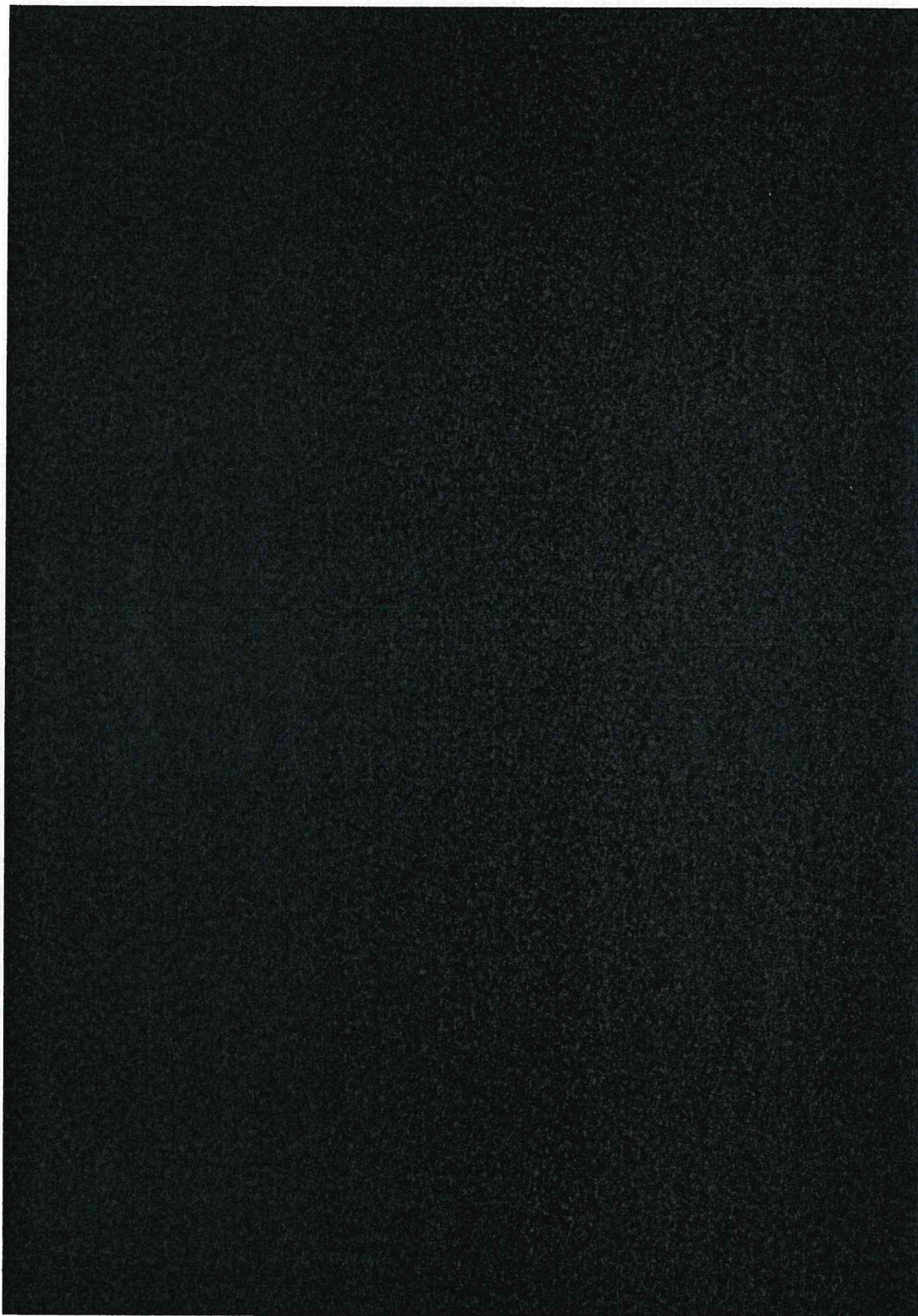
"The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned."

During the "Le Journal" of 04 April 2018 at around 17h03 the identity of the child victim of sexual abuse was broadcast as per the transcript below.



DL

Mark Pierre :



A handwritten signature or set of initials in black ink, located at the bottom right of the page. The signature is stylized and appears to be written over the page number.

You are hereby requested to show cause, in writing, by **Monday 09 April 2018 at noon** as to why the licence of TOP FM should not be suspended under section 25(1)(d) of the IBA Act for breach of Paragraph 3(7) of the Code of Conduct for Broadcasting Services.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'K. Ramphul', written over a horizontal line.

K. Ramphul
Acting Director