

HAVEMANN INC

SPECIALIST ENERGY ATTORNEYS

To: The Advertising Standards Authority
Per email: complaint@asasa.org.za
Per fax: +27 (0)11 781 1616
Date: 25 April 2011

From: Dr Luke Havemann
Our ref: LH201102/Shell

Dear Sirs

COMPLAINT AGAINST A PRINT ADVERTISEMENT BY SHELL

Introduction

1. We confirm that we act for Treasure the Karoo Action Group ("our client").
2. We have been requested by the National Co-ordinator of our client, Mr Jonathan Deal (identity number 5901215038088), to lodge a formal complaint against print advertising by Shell ("the Advertiser"). This letter is thus to be viewed as constituting such a complaint. A copy of the relevant advertisement ("the Advert") has appeared in *The Sunday Times*, dated 17 April 2011, and on page 7 of the *Cape Times*, dated 19 April 2011. A scanned copy of the Advert is submitted herewith, for your ease of reference, marked "**Annexure A**".
3. We have been instructed that, in breach of the Code of Advertising Practice ("the Code"), the Advert is misleading, dishonest, untruthful and was prepared without an appropriate sense of responsibility towards its target audience. Moreover, the Advertiser failed to ensure that the spirit and/or letter of the provisions of the Code were scrupulously observed.

The Complaint

4. The specific grounds of complaint upon which our client relies are set out hereunder, with reference to the relevant sections of the Code. At this juncture, we wish to point out that, due to the vast number of sources that refute many of the misleading aspects of the Advert, a reference to each and every source in question has fallen beyond the scope of this complaint. We will, however, in the event that additional proof is required, make available copies of the relevant information.

4.1. Section II, Clause 4.2.1, of the Code:

4.1.1. Section II, Clause 4.2.1, of the Code dictates that “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.”

4.1.2. The Advert contains the following statements that are in breach of Section II, Clause 4.2.1, of the Code:

4.1.2.1. **“As part of our continuing effort to build a public dialogue regarding potential exploration activities in the Karoo, Shell wants to provide additional information related to questions raised during recent public meetings and other conservations.”**

4.1.2.1.1. This statement is misleading as the word **“continuing”** implies that Shell has for some time been involved in building a broader public dialogue regarding its potential exploration activities. On the contrary, Shell’s conduct to date constitutes nothing other than an attempt to fulfill its statutorily-imposed obligation to conduct public participation meetings and Shell

was not prior to the conduct of such meetings involved in any so-called **“effort to build a public dialogue.”**

4.1.2.1.2. The above inaccurate claim has the potential to mislead the readers of the Advert into believing that Shell has done more than simply attempt to fulfill its statutory obligations.

4.1.2.2. In the Advert, under the heading **“History of Hydraulic Fracturing,”** the following question is posed: **“Shell says hydraulic fracturing has been around for 60 years. Why haven’t people heard of it?”** The answer that is given to this question includes the following statements: **“The first use of hydraulic fracturing to stimulate the flow of natural gas occurred in 1947 in the Hugoton field in Kansas, USA. But deep shale gas formations didn’t become commercially recoverable until the recent coupling of two technologies – hydraulic fracturing and horizontal drilling. This marriage of technologies has led to dramatic increases in the availability of natural gas from deep shale formations, as well as increased awareness of the benefits of shale gas.”**

4.1.2.2.1. Although it may be the case that the combined use of hydraulic fracturing and horizontal drilling techniques has led to an increase in the availability of natural gas, the statement that the combination of these technologies has led to an **“increased awareness of the benefits of shale gas”** is unsubstantiated, inaccurate and misleading. No indication is given as to what these alleged benefits may be. On the contrary, the recently-heightened interest in the exploitation of shale gas reserves, by means of hydraulic fracturing, has resulted in an increased domestic and global awareness of the associated environmental and health risks of fracturing

and not of any so-called benefits of shale gas. A simple internet-based search reveals that a truly substantial amount of information is available regarding the serious concerns that have been raised with regard to the risks posed by hydraulic fracturing. It is beyond the necessary scope of this complaint to delve into great detail regarding the numerous sources of such information, however, as mentioned, lists of such sources can and will be made available upon request.

4.1.2.2.2. For current purposes, suffice it to point out the following: various states in the United States of America, including New York and Maryland, have introduced moratoria on hydraulic fracturing; France has recently extended a moratorium on hydraulic fracturing; and, tellingly, the Cabinet of the South African Government, as at the time of writing, has declared a moratorium on the issuing of licenses for hydraulic fracturing. Clearly, from the viewpoint of the Advert's target audience, the recent interest in hydraulic fracturing demonstrates not an increased awareness of the alleged benefits of natural gas, but rather an increased awareness of the negative environmental and health risks associated therewith. Accordingly, Shell's reference to **"an increased awareness of the benefits of shale gas"** is false.

4.1.2.2.3. Referring to an **"increased awareness of the benefits of shale gas"** is an unnecessary addition to the answer to the relevant question as it fails to shed any light on why people have, allegedly, not heard of hydraulic fracturing. Although there may be a connection between the **"coupling"** of hydraulic fracturing and horizontal drilling and the possible increased availability of natural gas, there is no logical connection between such coupling and the alleged **"increased awareness of the benefits of natural gas."** By

incorporating such a statement amongst various statements of apparent fact, such as the size of rock pores and the date on which hydraulic fracturing was first used to stimulate the flow of natural gas, it is implied that the Advertiser's reference to **"an increased awareness of the benefits of shale gas"** is also a statement of fact. Such implication is inappropriate and misleading.

4.1.2.2.4. At best, the statement that there has been **"an increased awareness of the benefits of shale gas"** is an unsubstantiated and inaccurate opinion, particularly when the numerous international moratoria (including those imposed in France, Canada and South Africa) and bans that have been introduced against hydraulic fracturing are taken into account.

4.1.2.3. **"Today, hydraulic fracturing is used at nearly nine out of every 10 natural gas wells."**

4.1.2.3.1. This statement is unsubstantiated and is likely to mislead readers for two reasons. Firstly, readers may be misled into believing that hydraulic fracturing is a commonplace and generally accepted technique for the exploitation of natural gas, which it is not. On the contrary, various reports have indicated that hydraulic fracturing is a highly controversial technique that is currently the subject of high-level environmental studies and which has been banned and placed under moratoria in various countries, as stated above. Your attention is drawn to the so-called BAPE Report of Canada and the Tyndall Report of the United Kingdom, as well as the fact that the Environmental Protection Agency of the United States of America is currently engaged in an environmental impact study on hydraulic fracturing, which

study was motivated by, *inter alia*, numerous pollution incidents in the United States of America.

4.1.2.3.2. Secondly, the statement that “**hydraulic fracturing is used in nearly nine out of 10 natural gas wells**” is phrased in such a way that it may mislead readers into believing that nearly ninety per cent of natural gas that is currently being produced is as a result of the employment of hydraulic fracturing. The existence of international moratoria on hydraulic fracturing, including the South African moratorium, sheds serious doubt on the truthfulness of this statement. Readers of the Advert are thus at risk of being exposed to the purposeful manipulation of information in an attempt by Shell to convey that hydraulic fracturing is a commonplace and generally accepted technique for the exploitation of natural gas.

4.1.2.4. **“MULTIPLE LAYERS OF STEEL CASING AND CEMENT PROTECT GROUNDWATER AQUIFERS”**

4.1.2.4.1. The above phrase appears in upper case, as part of the diagram, which is found on the left-hand side of the Advert and it is misleading for various reasons, discussed below.

4.1.2.4.2. Firstly, the steel casings and cement that are used in wells are primarily designed to maintain the relevant wells’ integrity and not to protect groundwater aquifers. The Advert is consequently misleading as to the cardinal purpose of the relevant steel casing and cement.

4.1.2.4.3. The second reason why the relevant statement is misleading relates to the Advert’s particular use of the word “**AQUIFER**”, which appears in light blue at the top left of the

relevant diagram. The term “**AQUIFER**” has been designed to refer to the two light-blue rectangles that appear on either side of multiple vertical black-and-grey lines, which are used to depict steel casing and cement. The aquifer has been positioned to appear just below two brown rectangles which feature just below a green rectangle containing the image of a derrick. It is understood that the two brown rectangles represent the earth’s surface. Bearing the foregoing in mind, two aspects of the diagram are misleading. Firstly, the aquifers in the Karoo are not situated just below the earth’s surface and, secondly, there appear to be five layers of steel casing and cement on either side of the well and between the aquifer and the well itself, a depiction that does not accurately reflect standard well design as per statements made by Shell’s representatives at various public meetings.

4.1.2.4.4. Bearing the aforesaid two misleading aspects of the diagram in mind, it is noteworthy that, towards the bottom left-hand side of the diagram – where indications of depth below the earth’s surface are given, namely, “1 km”, “2 km” and “3km” and at which depths one is far more likely to encounter aquifers – the “**MULTIPLE LAYERS OF STEEL CASING AND CEMENT**” are no longer present. Consequently, the incorrect positioning of the word “**AQUIFER**” creates the false impression that many layers of steel and cement will protect groundwater aquifers from contamination. If the aquifer had been appropriately positioned at a greater depth, it might not have been possible for Shell to create the misleading impression, or make the misleading statement, that “**MULTIPLE LAYERS OF STEEL CASING AND CEMENT PROTECT GROUNDWATER AQUIFERS.**”

4.1.2.5. **“There has never been a single documented case of groundwater contamination resulting from fracturing, according to a host of independent environmental regulators.”**

4.1.2.5.1. The above statements are false and misleading. Cases of groundwater contamination resulting from hydraulic fracturing have indeed been documented. Internationally recognized documentaries, various print and online articles, as well as presentations by various internationally-renowned academics, have attested to the contamination of groundwater as a consequence of fracturing.

4.1.2.5.2. The Advert is misleading as it refers only to **“groundwater contamination”** and not to surface water contamination or contamination of water generally. It is a fact that hydraulic fracturing can result in contamination of both groundwater and surface water resources and numerous instances can be referred to in support of this fact. It is perhaps worth pointing out that such an instance recently occurred when, on Tuesday, 19 April 2011, as a consequence of a blow-out at a well in Pennsylvania, thousands of gallons of chemical-laced water used in hydraulic fracturing were spilled onto surrounding farmland and into local waterways. Local residents had to be evacuated and the farmer on whose land the relevant well had been drilled was advised by officials not to allow his cattle to drink from the local stream. This incident is the eighth large-scale documented pollution incident in the United States and we are instructed that the previous seven incidents were, prior the publishing of the Advert, specifically brought to Shell’s attention. It follows that the Advert displays dishonesty, which dishonesty is aimed at misleading the target audience.

4.1.2.5.3. The reference to **"a host of independent environmental regulators"** implies that numerous independent environmental regulators have stated that there has never been a case of groundwater contamination resulting from hydraulic fracturing. We are instructed that Shell will not be in a position to produce a list containing "a host of independent environmental regulators" nor documented statements by them to the effect that there has never been a case of groundwater contamination. Consequently, the reference to such regulators in the Advert is inaccurate and misleading.

4.1.2.6. **"Top environmental regulators from Colorado and Oklahoma – major energy-producing states where fracturing has been responsibly used tens of thousands of times for decades to enhance oil and natural gas development – recently testified before the US Congress, confirming that "there has not been a single documented instance of contamination to groundwater or drinking water as result of hydraulic fracturing" and that "we have found no verified instance of hydraulic fracturing harming groundwater."**

4.1.2.6.1. The words, **"top environmental regulators,"** have been used to refer to David Neslin, a director of the Colorado Oil and Gas Conservation Commission, and Jeff Cloud, the Vice Chairman of Oklahoma Corporation Commission. Describing these two individuals and/or the commissions that they represent as **"top environmental regulators"** is an inaccurate and exaggerated claim. The Colorado Oil and Gas Conservation Commission regulates the oil and gas industry and is responsible for promoting the development of

Colorado's oil and gas resources. Although it is tasked with, amongst other things, implementing rules aimed at preventing significant environmental impacts, environmental regulation is not its primary role and it is certainly not a **"top"** environmental regulator. Instead, the Colorado Oil and Gas Conservation Commission deals to a large extent with tasks such as the issuing of permits for oil and gas drilling and production operations as well as the enforcement of rules relating to the spacing of wells and well bore construction. In the Advert, Shell has portrayed David Neslin and the Colorado Oil and Gas Conservation Commission **"top environmental regulators"** this is clearly inaccurate and misleading. Similarly, as regards Jeff Cloud, it must be noted that the Oklahoma Corporation Commission is a regulatory agency that is focused on fuel, oil and gas, public utilities and transportation industries. Both Jeff Cloud and the Oklahoma Corporation Commission are not **"top environmental regulators"** as Shell would have the South African public believe them to be.

4.1.2.6.2. The claim that Colorado and Oklahoma are **"states where fracturing has been responsibly used tens of thousands of times for decades"** is an inaccurate and highly exaggerated claim. Both Colorado and Oklahoma have had to endure many instances of environmental degradation occasioned by hydraulic fracturing. The Advert is accordingly inaccurate and misleading.

4.1.2.6.3. The testimony given by David Neslin, namely, that **"there has not been a single documented instance of contamination to groundwater or drinking water as result of hydraulic fracturing"** is inaccurate and the Advertiser's use thereof in the Advert is misleading as to the true state of

affairs. Numerous instances of contamination of groundwater and drinking water as a result of hydraulic fracturing have been documented. The same criticism applies to the testimony of Jeff Cloud. It would be disingenuous for Shell to claim either that they were unaware of the numerous instances of contamination or that they were not relying on the testimony of David Neslin and Jeff Cloud so as mislead readers of the Advert as regards the true state of affairs.

4.1.2.6.4. By making selective use of the testimony of David Neslin and Jeff Cloud, Shell will have readers of the Advert believe that there have been no instances where hydraulic fracturing has contaminated water resources. Shell has provided misleading information and omitted to draw readers' attention to the numerous documented instances where hydraulic fracturing has resulted in the contamination of water resources.

4.1.2.7. **"A typical fracture treatment uses very low concentrations of between three and 12 additives, depending on the unique characteristics of each well. The US Department of Energy maintains lists of those additives, as well as other useful information, online..."**

4.1.2.7.1. By means of implication and omission this statement is likely to mislead its target audience. By stating that "[a] typical fracture treatment uses very low concentrations of between three and 12 additives, depending on the unique characteristics of each well", Shell will have the reader believe that only as many as 12 chemical additives would be used in each well. This is inaccurate and misleading. The document to which Shell refers in substantiation of its claim lists more than 12 so-called additives. Not only is the

information supplied by Shell inaccurate, the Advert is misleading in that no mention is made of volumes of hydraulic fracturing products that are used in a **“typical fracture treatment”** or what precisely a typical fracture treatment entails. Shell has omitted to furnish appropriate information as regards the number and accumulative nature of the chemical additives employed in hydraulic fracturing. Various reports have demonstrated that hundreds of highly toxic chemicals are employed during hydraulic fracturing and by referring in the Advert to **“very low concentrations of between three to 12 additives”** it appears that Shell is attempting to mislead the South African public as to the true state of affairs in this regard.

4.1.2.8. **“Since each well is unique and requires a different blend of additives depending on a number of factors, including the geology of the shale formation, depth of the formation and temperature of the rock at depth, Shell can’t be more specific at this time.”**

4.1.2.8.1. While it may well be the case that each well requires a different blend of chemicals, Shell is not being truthful by stating that it **“can’t be more specific at this time.”** During the recent public participation meetings that took place in relation to Shell’s draft Environmental Management Plan, representatives of Shell and Golder Associates (the Environmental Consultants appointed by Shell) made certain statements that contradict the relevant statement made in the Advert. The aforementioned representatives responded to requests for a complete list of all the possible chemicals that may be used by stating that they could provide such a list but that it would be a very extensive list and, because Shell did not intend to use all the chemicals so listed, it would, in