

## **TV3 Network Services Ltd v BSA, Graeme Ebbett, ASA and TVNZ**

(High Court, Wellington, Hammond J, 25 July 2003 – CP 155/02)

### **Broadcast**

Advertisement for Viagra was broadcast in advertising break during a prime time news programme on TV3.

### **Complaint**

G Ebbett complained to TV3 concerning the advertisement arguing its placement during an advertising break in a news programme breached Standard 1 (good taste and decency). He argued that by conjunction of the Viagra advertisement within a news programme, TV3 had breached the provisions of Broadcasting Act 1989.

TV3 considered that the contents of the advertisement was neither inappropriate nor objectionable whether in isolation or within the broadcast of the news. It advised him that he could take the matter further with the Advertising Standards Complaints Board.

Mr Ebbett told TV3 that it had misunderstood his complaint and that it was not about the contents of the advertisement but its “placement close to the news”. He referred the matter to the BSA.

### **Authority’s Findings**

Based on the High Court’s findings in *Watson v Television New Zealand Limited* [2002] NZAR 524, the Authority accepted the referral.

In *Watson*, Young J found that the BSA had jurisdiction over the conjunction or inter-action between programmes and advertisements, because the standards provision in the Broadcasting Act (specifically section 4(1)(a) related to “programmes and their presentation”.

### **Nature of Review**

TV3 applied for judicial review arguing the BSA did not have jurisdiction to “entertain such a ‘conjunction’ argument” and that, to the extent that the *Watson* decision held to the contrary, it had been incorrectly decided by Young J.

The broadcaster sought a declaration that the BSA had no jurisdiction to consider Mr Ebbett’s complaint and that the BSA’s decision that it did was unlawful and invalid. It also sought an order restraining the BSA from proceeding to determine the complaint.

### **Outcome**

- Word “presentation” in section 4(1)(a) not clear enough to mean “all that surrounds the programme”
- Parliament gave jurisdiction to the advertising bodies to consider complaints about the content of advertisements in the Broadcasting Amendment Act 1993, and this can include considering their placement or “conjunction” with programmes.
- BSA had no jurisdiction to consider Mr Ebbett’s complaint and the view of the Authority that it did was unlawful and invalid.

Application for judicial review granted.