

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 1/90
Dated the 19th day of January 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CLIFFORD REGINALD TURNER
of Hamilton

Warrant Holder
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.L. Hardie
J.R. Morris

DECISION

Introduction

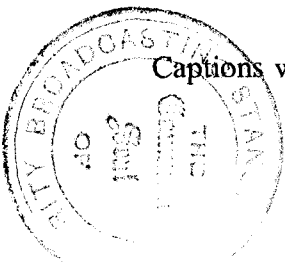
On 11 July 1989, at approximately 7.40pm, Television New Zealand Limited broadcast on TV1 an advertisement for a rugby league series sponsored by Lion Red Limited. The advertisement shows a group of adult male players in action accompanied by a background song or chorus:

Give'em a taste of Kiwi
Show'em you're the best
Give'em a taste of Kiwi
You're better than the rest

The voice-over at the end states:

Lion Red Limited proudly presents the Second Test
New Zealand versus Australia 2.30pm this Sunday.
International Stadium, Rotorua
Lion Red League
The measure of a man.

Captions which reflected the voice-over then appeared in the final frame.



Mr Turner's Complaint to TVNZ

In letters dated 11 and 13 July 1989 Mr C. R. Turner formally complained that this advertisement breached Rule 4 of the Code for Advertising Alcoholic Beverages published by the Committee of Advertising Practice. This rule states that "Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young" and Mr Turner stated his belief that the rugby league players representing New Zealand fitted the definition, contained in the Code, of "identifiable heroes and heroines of the young".

TVNZ's Response

TVNZ advised Mr Turner on 13 September that its Complaints Committee had considered his complaint at its rescheduled meeting on 1 September in the context of Rule 4 and had not upheld it.

The Committee had decided that it was clear that the advertisement amounted to "sponsorship advertising" as defined in the Code and that Rule 4, which relates to "liquor advertisements" and "liquor advertising", had no application.

The Code defines "Liquor Advertising" and "Sponsorship Advertising" as follows:

"Liquor Advertising" means the promotion or the sale of liquor, whether by product, brand or outlet, other than in premises licensed to sell liquor, where payment is made or received by any party to this Code. "Liquor advertisements" has a corresponding meaning. This definition does not include "Sponsorship Advertising" as defined herein.

"Sponsorship Advertising" means any advertisement which contains a statement of sponsorship by or on behalf of an advertiser (product, brand or outlet) of a sports or other event (e.g. "Sponsored by ...", "proud sponsors of...") provided always that such an advertisement does not contain any sales message pertaining to liquor and does not depict liquor products, liquor packaging or the consumption of liquor. References to a sponsor may contain the sponsor's name and/or logo."

In support of the Committee's decision, TVNZ observed that the phrase "proudly presents" in the voice-over clearly related to the sponsorship of the series known as the Lion Red Series. It was also stated that the commercial did not contain any sales message pertaining to liquor and did not depict liquor products, liquor packaging or the consumption of liquor, i.e. it did not meet the definition of a "liquor advertisement".

In these circumstances, TVNZ considered that the Code had not been breached.



Mr Turner's Complaint to the Broadcasting Standards Authority

On 5 October Mr Turner, being dissatisfied with TVNZ's decision, referred his complaint to the Broadcasting Standards Authority pursuant to section 8(a) of the Broadcasting Act 1989.

He repeated his claim that in referring to the members of the New Zealand rugby league team, the advertisement breached Rule 4 of the Code.

In an addendum to his complaint, Mr Turner exhorted Members of the Authority to read Decision No 3/89 of the Broadcasting Tribunal and drew attention to the (then) recently amended Rule 4.

In the same addendum, he also suggested that the words "The measure of a man" were an echo of Lion Red Ltd's slogan "The measure of a man's thirst", a slogan the Company frequently used in print advertising. The use of that slogan, he argued, was sufficient to render unsustainable the argument that the advertisement was not a liquor advertisement.

TVNZ's Response to the Authority

In its response to Mr Turner's complaint to the Authority, TVNZ denied that the advertisement breached Rule 4 of the Code.

TVNZ maintained that Decision No 3/89 of the Broadcasting Tribunal was not relevant as the Code had subsequently been rewritten to meet some of the criticisms contained in that Decision. Particular attention was drawn to the change in the definition of "liquor advertising" (which specifically excludes "sponsorship advertising") and to the revised definition of "sponsorship advertising" itself.

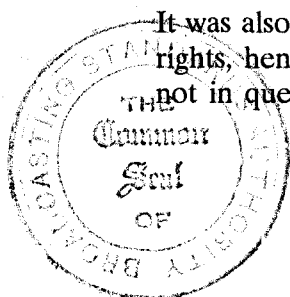
TVNZ was in no doubt that the advertisement was "sponsorship advertising". It repeated its earlier assertion that the advertisement did not promote the sale of liquor, whether by product, brand or outlet; nor did it contain any sales message pertaining to liquor or depict packaging or the consumption of liquor.

Although not specifically incorporating the words "sponsors of" or "sponsored by", as cited by way of example in the definition of "sponsorship advertising", TVNZ submitted that the use of the phrase "proudly presents" represented synonymous usage.

As such, TVNZ further submitted that the advertisement came within the definition of "sponsorship advertising" and was not required to observe the restrictions contained in Rule 4 relating to "identifiable heroes or heroines of the young".

With regard to Mr Turner's claim concerning the slogan "The measure of a man", TVNZ argued that it needed to be seen in its overall context, i.e. "Lion Red League. The measure of a man". The clear meaning behind the words was that rugby league is a strong or fit man's sport and this was backed up by the on-screen portrayal of aggressively-running players.

It was also noted that as Lion Red Limited was sponsoring the series, it was entitled to naming rights, hence Lion Red League. In this context, "the product of Lion Red Limited was clearly not in question".



Mr Turner's Comment

Mr Turner was given the opportunity to comment on TVNZ's response.

In a letter dated 8 November, he alluded to the "macho" nature of the advertisement; he also repeated his claim about the resemblance of the "The measure of a man" slogan with that used by Lion Red Limited in its print advertising.

Decision

Mr Turner's complaint that this Lion Red Limited advertisement breaches Rule 4 of the CAP Code for Advertising Alcoholic Beverages can only be upheld if the advertisement falls within the definition of "Liquor Advertising" as defined in the Code.

If the advertisement is, as TVNZ claims, "Sponsorship Advertising" within the meaning of that definition, also contained in the Code, there can be no breach of Rule 4.

(We note in passing that this Code was adopted by the Committee of Advertising Practice with effect from 15 May 1989 and was given *pro forma* interim approval by the Authority in July of last year at its first Meeting. All broadcasters, including TVNZ, are obliged by law to observe standards laid down in codes approved by the Authority.)

As was pointed out by TVNZ, the definitions of these two terms were rewritten following criticism contained in Decision No 3/89 of the Broadcasting Tribunal. That Decision was based on the then definitions. We must make our decision on the revised and current definitions both of these terms and the wording of what is now Rule 4.

As stated earlier, Rule 4 of the Code provides that:

"Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young."

and the relevant definitions read as follows:

"Liquor Advertising" means the promotion or the sale of liquor, whether by product, brand or outlet, other than in premises licensed to sell liquor, where payment is made or received by any party to this Code. "Liquor advertisements" has a corresponding meaning. This definition does not include "Sponsorship Advertising" as defined herein.

"Sponsorship Advertising" means any advertisement which contains a statement of sponsorship by or on behalf of an advertiser (product, brand or outlet) of a sports or other event (e.g. "Sponsored by ...", "proud sponsors of ...") provided always that such an advertisement does not contain any sales message pertaining to liquor and does not depict liquor products, liquor packaging or the consumption of liquor. References to a sponsor may contain the sponsor's name and/or logo."



The Authority has considered the advertisement in the context of these definitions and, having viewed a tape of the advertisement, is satisfied that it is "sponsorship advertising" within the meaning of that definition. The advertisement contains a statement of sponsorship on behalf of Lion Red Limited. It does not depict liquor products, liquor packaging or the consumption of liquor. Nor does it contain any sales message pertaining to liquor - the Authority was not convinced by the argument that the use of the slogan "Lion Red League The measure of a man" should be seen as an endeavour to "pass off" the Company's print advertising slogan "The measure of a man's thirst". However, we are concerned at the intrusion of slogans which closely resemble slogans used for promoting liquor in other forms of advertising.

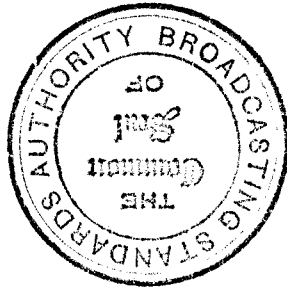
The Authority therefore declines to uphold the complaint.

As a rider to its decision, the Authority would stress the desirability of using words such as "sponsorship", "sponsors" or "sponsored by", in order to avoid doubt about statements of sponsorship. Although the examples cited in the definition of "Sponsorship Advertising" are just that, they are at least clear and unequivocal.

Signed for the Authority



Iain Gallaway
Chairperson



19 January 1990