

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 8 /90

Dated the 23rd day of May 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CLIFFORD R TURNER

of Hamilton

(on behalf of the Group Opposed  
to Advertising of Liquor)

Broadcaster

TELEVISION NEW ZEALAND LTD

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

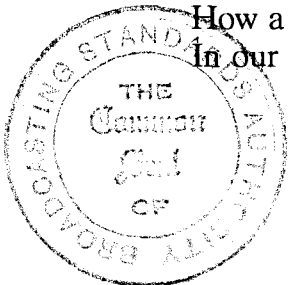
Introduction

Mr Clifford Turner has complained, on behalf of the Group Opposed to Advertising of Liquor (GOAL), about an advertisement screened on TV 1 at about 3.10 p.m. on Saturday 28 October 1989. He claims that the advertisement was designed "to promote the sale of Wilsons whisky" and breached the rules prohibiting the use of brand names in advertisements.

The Advertisement

The advertisement consists of a series of scenes with a voice-over giving the following commentary:

They whispered in the old days  
And the secret lingers still  
How a spirit rose in secret  
In our dusky southern hills.



It bore a blend of passion  
 Of patience and of pride  
 A true New Zealand spirit  
 Whose fame spread far and wide.

We prize our own rare spirit  
 From Deep Creek to the Leith  
 It's the soul of our proud country  
 Not an echo of the heath.

So remember now the old days  
 In our dusky southern hills  
 And the secret that was born there  
 Here the secret lingers still.

The first scenes are of New Zealand bush and the Hokunui Hills followed by male workers in period dress of around 50 years ago in a warehouse-like setting handling barrels, shovelling grains, looking into a furnace, and hammering. At one point a swiftly flowing stream is shown with a man dipping a glass down into the water and holding it up to examine the contents. The final scene shows a large old-style distillery with a horse and wagon driving across the front of the building. The words *Wilson Distilleries Ltd* are shown across the foreground.

The colours are very muted, often sepia-like and the mood evoked is one of the peace, security and values of yesteryear.

### Mr Turner's Complaint to Television New Zealand Limited

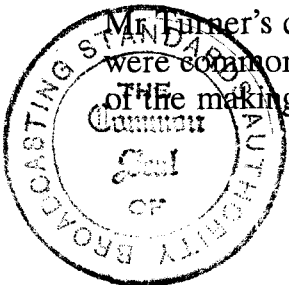
Mr Turner wrote a very brief letter to TVNZ on 28 October 1989, making a formal complaint in the following terms:

"I believe this advertising breached Rule 1.11.1. Pictures were shown of the distillery; doubtless the whisky that leaves this distillery is sold and thus it could be properly claimed that the distillery is a point of sale.

Rule 1.11.1(1) forbids the use of brand names but there is a Wilsons brand of whisky. The advertisement focused on the liquor rather than on the point of sale. There were several references to "spirit"; grain, an ingredient of whisky, was shown; there was a picture of a barrel. The whole advertisement was designed to promote the sale of Wilsons whisky."

### TVNZ's Response to Mr Turner's Complaint

Mr Turner's complaint alleged a breach of the liquor advertising provisions contained in what were commonly referred to as the Television Advertising Rules. These Rules had, at the time of the making of the complaint, actually been repealed and replaced by the Code for Liquor



Advertising contained in the Codes of Broadcasting Practice for Television adopted on a pro forma and interim basis by the Authority in July 1989. Since, however, the substance of the old Television Advertising Rules on liquor advertising and that of the new Code for Liquor Advertising were identical, TVNZ elected to receive and to determine Mr Turner's complaint on the basis of his reference to the out-dated Television Advertising Rules.

In its reply to Mr Turner, TVNZ advised that its Complaints Committee had not upheld his complaint. It was pointed out that the Rule he had relied on (Rule 1.11.1 and sub-rule (1)) did not apply to the advertisement in question and that the advertisement could only be viewed against the rule that *did* apply, Rule 1.11.2 and its sub-rules.

Although unstated, TVNZ was clearly of the view that if viewed against Rule 1.11.2 and its sub-rules, the advertisement would not be in breach of those provisions.

The full text of Rule 1.11.1 (and its sub-rules) and Rule 1.11.2 (and its sub-rules) is set forth in the Appendix to this Decision.

#### **Mr Turner's Complaint to the Broadcasting Standards Authority**

On 27 December 1989, Mr Turner referred his complaint to the Authority for an investigation and review.

On his Broadcasting Complaint Referral Form, Mr Turner alleged a breach of Rule 1.11.1 (2) and stated that:

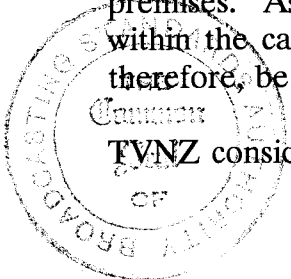
"I believe that the purpose of the advertising was to promote Wilson's whisky. There was a voice-over of doggerel which was identical to that used in print for advertising Wilson's whisky. The word "spirit" was used. Grain, barrels, a man holding a glass were shown."

Mr Turner's Form was referred to Television New Zealand Ltd for comment.

#### **TVNZ's Response to the Authority**

In a letter dated 13 March 1990, TVNZ stressed that advertisements must be "made on behalf of a wholesale or retail point or points of sale" and must "refer to the availability of alcoholic liquor for sale for consumption on or off the advertiser's premises", if they are to come within the ambit of Rule 1.11.1 (1), (2) or (3). TVNZ denied that the distillery was, as originally claimed by Mr Turner, a point of sale - in the accepted sense of what constituted a wholesale or retail outlet, the distillery was a manufacturing plant and not a sales outlet. Further, there was no reference to the availability of alcoholic liquor for sale for consumption on or off the premises. As the advertisement did not meet either of these pre-conditions, it did not fall within the category of advertisements covered by Rule 1.11.1 (1), (2) or (3) and could not, therefore, be in breach of that Rule.

TVNZ considered Mr Turner's references to the doggerel, the mention of the "spirit", etc to



be not relevant to his complaint.

Finally, TVNZ emphasised to the Authority, as it had to Mr Turner, that the advertisement was accepted for broadcast in the context of Rule 1.11.2 and that the governing opening clause of that Rule, and its sub-rules, permit the advertising of the commercial in question.

### Further Correspondence

Several more letters were exchanged between Mr Turner and TVNZ but the arguments remained as outlined above.

### Decision

As earlier noted, Television Advertising Rules 1.11.1 and 1.11.2 (and their sub-rules) are now to be found in the Code for Liquor Advertising located in the TV Advertising Standards section of the Codes of Broadcasting Practice for Television. Although they appear unchanged in the Code as standards 1, 1(i), 1(ii) and 2, respectively, the Authority shall, for ease of comprehension, employ the terminology used by the complainant and TVNZ.

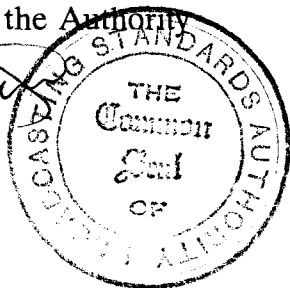
TVNZ maintained that none of the Rules quoted by Mr Turner were relevant and that the only Rule under which the complaint could be considered was Rule 1.11.2. Having carefully read and reread the correspondence and viewed the videotape of the advertisement, the Authority agrees that the only relevant Rule is Rule 1.11.2, in spite of Mr Turner's persistence in complaining first to the Company under Rule 1.11.1 and 1.11.1(1) and then to the Authority under Rule 1.11.1(2). However, regardless of the relevance of the particular Rules or otherwise the Authority accepts the argument of the Company that the film of what was presumably the Distillery did not identify a wholesale or retail point of sale and did not refer to "the availability of alcoholic liquor for sale/or consumption on or off the advertiser's premises".

Furthermore, the Authority does not accept Mr Turner's argument that "the advertisement focussed on the liquor" and that reference to "spirit" in the doggerel, the grain and barrel and the man holding the glass alongside a fast running stream and the words "Wilson Distillers Ltd" in the film either individually or collectively promotes a brand name of whisky or provides a description of its qualities.

**For the reasons set forth above, the Authority declines to uphold the complaint.**

Signed for and on behalf the Authority

*Iain Gallaway*  
Iain Gallaway  
Chairperson  
23 May 1990



(i)

## APPENDIX

### Extract from the Advertisement Rules contained in the Television Standards and Rules adopted by the Broadcasting Rules Committee

1.11.1 Advertisements made on behalf of a wholesale or retail point or points of sale and which refer to the availability of alcoholic liquor for sale for consumption on or off the advertiser's premises may be broadcast if they meet the following requirements:

1.11.1(1) Advertisements must not use brand names of alcoholic liquor as such except to the extent that the brand name is incorporated in or identical with the name of the advertiser.

*Note:* A brand name is one which is the name of a particular wine, spirit or beer, etc., such as "Corbans Premier Cuvee", "Gilbeys Gin", "Leopard Lager", or one which refers to a specific range of wines, spirits, beers, etc., from a particular vintner, manufacturer or distributor, such as "Corbans" wines, "Gilbeys" spirits, "Leopard" beers. There are some sale outlets which incorporate brand names in their title, e.g. Mission Vineyard, Montana Weinkeller, Lion Tavern, etc. These titles may be used in advertisements only in such a way that they refer clearly and consistently to the point of sale, and not to the brand of wine etc.

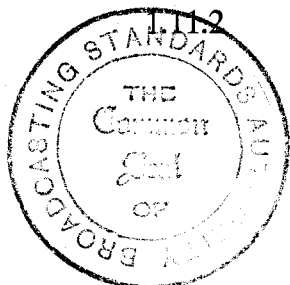
1.11.1(2) No specific prices or descriptions of the qualities of any alcoholic liquor are included in the advertisement.

1.11.1(3) Such advertisements may include any of the following additional information in relation to the availability of alcoholic liquor:

(a) Description of the points of sale and the service. (Note for example, location, hours of sale, details of parking, delivery and type of sale (wholesale or retail).

(b) Description of the general range of alcoholic liquor available. (Note for example: "A full stock of New Zealand and overseas wines, New Zealand and imported spirits and cordials, and a wide range of beer in cans, bottles and flagons").

Advertisements other than those referred to in 1.11.1 made by or on behalf of any person or persons or body corporate who manufacture, distribute or sell alcoholic liquor, or whose name is associated with the manufacture,



(ii)

distribution or sale of alcoholic liquor, may be broadcast if they meet the following requirements:

- 1.11.2(1) The advertisement does not make any reference to the availability of alcoholic liquor for sale.
- 1.11.2(2) The advertisement does not include references to brand names of alcoholic liquor as such except to the extent that the brand name is incorporated in or identical with the name of the advertiser.
- 1.11.2(3) No descriptions of the qualities of the alcoholic liquor manufactured, distributed or sold by the advertiser are included in the advertisement.

