

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 10/90

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

RADIO PACIFIC (WAIKATO)
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

This complaint arose from the broadcast on 23 January 1990 at approximately 9.57 am on Radio Pacific-Waikato of an advertisement for a race meeting of the Waikato Harness Racing Club.

Mr Clifford Turner, on behalf of the Group Opposed to Advertising of Liquor (GOAL), claims that the advertisement mentioned a brand name of a beer and included a description of the qualities of the beer, thus breaching Rules 2.2 and 2.3 of the Radio Industry Rules Currently in Force Controlling the Advertising of Liquor (or, more shortly, the Liquor Advertising Rules for Radio).

The Advertisement

The transcript of the advertisement reads as follows:

It's non-stop action and fun for the whole family as they race at Claudelands on Friday/Tonight ... the fields will be brilliant as they don their harnesses for



Waikato's richest harness race, the \$30,000 DB Draught Waikato Cup ... plus the \$21,000 DB Draught Graduation Series ... go harness racing and be in to win 2 tickets to the Commonwealth Games opening ceremony, plus 10 Harcourts lucky punter prizes ... there's a barbecue, hospitality tent and lots of other oncourse giveaways ... the pace is on with the Waikato Harness Racing club Friday/Tonight from 6.15 at Claudelands ... presented by DB Draught ... beer at its best.

Mr Turner's Complaint to Radio Pacific (Waikato) Limited

On the day of the broadcast Mr Turner wrote to the Station Manager of Radio Pacific (Waikato) Ltd on behalf of GOAL to lay a formal complaint:

" ... The crux of my complaint lies in the last sentence of the commercial; "Presented by DB Draught, beer at its best."

I believe that this last sentence breached Rules 2.2 and 2.3 of the Radio Industry Rules Currently in Force Controlling the Advertising of Liquor. To link DB with "beer at its best" is to advertise a brand name. The same words also constitute a description of the alcoholic liquor manufactured by Dominion Breweries."

Radio Pacific (Waikato) Limited's Response to Mr Turner's Complaint

Initially, Mr Stu Baguley, the Station Manager of Radio Pacific (Waikato) Ltd, turned away Mr Turner's complaint on the grounds that the Liquor Advertising Rules for Radio were "no longer in existence".

Mr Baguley also referred Mr Turner to the Committee of Advertising Practice's Code for Advertising Alcoholic Beverages and quoted that part of the CAP Code which states that "References to a sponsor may contain the sponsor's name and/or logo".

Mr Turner's Complaint to the Broadcasting Standards Authority

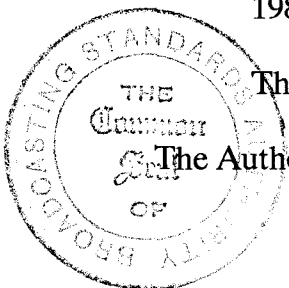
On 2 February the Authority received a Broadcasting Complaint Referral Form from Mr Turner in which he repeated his claim that the advertisement breached "Rules 2.2 and 2.3 of the June 1989 Rules Currently in Force Controlling the Advertising of Liquor".

In addition Mr Turner stated:

The Station did not consider my complaint against the Rules cited in the letter of complaint. The Station failed to tell me of my right to refer the complaint to the Broadcasting Standards Authority as is required by s 7(3) of the Broadcasting Act 1989.

The Station denied that the Rules cited are still in force.

The Authority subsequently wrote to the Station Manager of Radio Pacific (Waikato) Ltd



informing him that the Liquor Advertising Rules for Radio were still very much in force and inviting him to reopen his consideration of Mr Turner's complaint.

Radio Pacific (Waikato) Limited's Reopening of Mr Turner's Complaint

Mr Baguley reopened his consideration of Mr Turner's complaint and on 20 February wrote to Mr Turner informing him that:

"In reference to rule 2.2 it is Radio Pacific-Waikato's opinion that the omission of the word "Limited" in a sponsorship announcement does not transform a company name into an advertisement for beer (ref. Broadcasting Tribunal decision No: 50/1989). However, in the interests of responsible broadcasting we intend to use it in all future material broadcast.

In reference to rule 2.3. As you are now aware, the radio industry has two reference guides to the advertising of liquor. The codes of practice issued by the Committee of Advertising Practice states that reference to a sponsor may contain the sponsor's name and/or logo. Rule 2.3 of the Radio Standards Committee Codes of Broadcasting Practice for radio states that no description of the qualities of the alcoholic liquor manufactured, distributed or sold by the "Advertiser" are included in the advertisement.

The advertiser in this case was the Waikato Harness Racing Club. (The commercial was paid by and for the Waikato Harness Racing Club). The sponsor was D.B. Draught Limited. The sponsors logo was beer at its best.

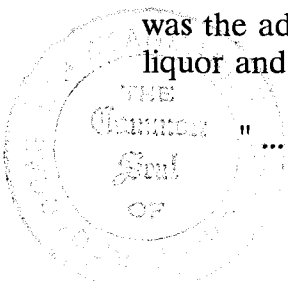
It is not Radio Pacific- Waikato's intention to search for "loop holes" in current regulations. However, the basis of complaint is that D.B. Draught Ltd was the advertiser. Radio Pacific-Waikato has received no money from or on behalf of D.B. Draught Ltd. Therefore we do not feel we have breached rule 2.3.

I can understand your concern and Radio Pacific- Waikato will now undertake to look at any sponsors in a self regulatory manner. We will include the word "sponsor" wherever the word advertiser is used in the Codes of Practice and follow it stringently."

Mr Turner's Response

Mr Turner was dissatisfied with this latest decision and on 23 February wrote again to the Authority asking it to reopen its consideration of his complaint on the basis of the Form received on 2 February. He noted, among other things, that the station used as its defence the point that the Waikato Harness Racing Club "not Dominion Breweries" was the advertiser. He asserted that the Club is a body corporate which sells alcoholic liquor and repeated the original grounds of his complaint:

"... The advertising referred to a brand name of liquor and contained the words



"Beer at its best". I continue to believe that Rule 2 (ii) and Rule 2 (iii) were breached. ..."

Additional Comments of Radio Pacific (Waikato) Limited

On 16 March Mr Baguley noted that the Waikato Harness Racing Club did not at any time advertise DB Draught for sale on its premises or the availability of bar services. The club mentioned DB Draught only as the sponsor of the actual racing.

Decision

The Liquor Advertising Rules for Radio (like its identical counterpart, the Code for Liquor Advertising included in the TV Advertising Standards) cover two main types of advertisement.

First, there are "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 or consumption on or off the advertiser's premises". Rule 1 provides that such advertisements may be broadcast if they meet the requirements set forth in Rules 1.1, and 1.2 and 1.3.

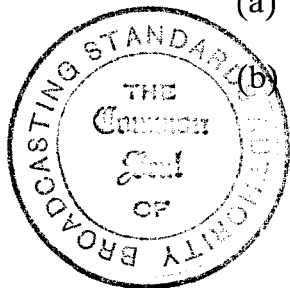
Secondly, there are "advertisements *other than* those referred to in [rule 1] made by or on behalf of any person or persons or body corporate who manufacture, distribute or sell alcoholic liquor, or whose name is associated with the manufacture, distribution or sale of alcoholic liquor" (*italics added*). Rule 2 provides that these advertisements may be broadcast if they meet the requirements set forth in Rules 2.1, 2.2 and 2.3.

Mr Turner considers the advertisement is firmly within the ambit of Rule 2 and does not meet the requirements set forth in Rules 2.2 and 2.3. These requirements are that:

- 2.2 The advertisement does not include references to brand names of alcoholic liquor as such except to such extent that the brand name is incorporated in or identical with that of the name of the advertiser.
- 2.3 No description of the qualities of the alcoholic liquor manufactured, distributed or sold by the advertiser are included in the advertisement.

A reading of the transcript confirms that the advertisement falls into the category of those covered by Rule 2. It was made for and paid for by the Waikato Harness Racing Club, an entity (presumably a "body corporate") which sells alcoholic liquor. The advertisement can therefore be broadcast provided it does not:

- (a) refer to the availability of liquor for sale (Rule 2.1);
- (b) include a brand name as such, unless it is included in the advertiser's name (Rule 2.3) and



(c) describe the qualities of the liquor sold by the advertiser (Rule 2.3).

To be not in breach, the advertisement must meet each of these requirements.

Although Rules 2.2 and 2.3 refer to the "advertiser", it would frustrate the general intent of these Rules if they were interpreted as binding only the true "advertiser" and not a "sponsor" who was being referred to by the "advertiser". Radio Pacific accepts this point for future cases, but not for the present complaint.

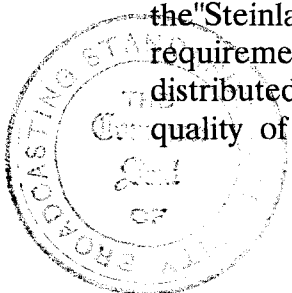
The Authority can only proceed to determine this complaint on the basis that the Rules in question cover "advertisers" and, where they are mentioned by the advertisers, "sponsors" as well. In the case of the present complaint, the true advertiser, the Racing Club, is caught by these rules as it comes within the reference to body corporate which sells alcoholic liquor.

The first requirement to be met if the advertisement is not to be in breach of Rule 2 is safely met, i.e., the commercial makes no reference to the availability of liquor for sale.

The second requirement is, however, less clearly met. There are three references to "DB Draught" in the advertisement. The first two are to the "\$30,000 DB Draught Waikato Cup" and the "\$21,000 DB Draught Graduation Series", neither of which can be said to be references to the brand name "DB Draught" as such. They are here used as abbreviations of a company's name which are included as part of the titles of two particular harness races. Desirably, of course, the word "Limited" should have been included, but this omission has been held to be not vital in this sort of context (see Decision No: 50/89 of the Broadcasting Tribunal and the Authority's Decision No: 9/90 of today's date) and they are not bald, isolated references to the DB Draught brand name. The third reference, and the one on which Mr Turner bases his complaint, is in the concluding sentence "Presented by DB Draught, beer at its best". Here, there is certainly room for dispute as to whether the omission of the word "Limited" makes this a reference to a brand name "as such". This particular reference to "DB Draught" is not, unlike the other two references, part of a name of a race or particular series, and the omission is a material one which, in the view of the Authority, reduces this particular reference to "DB Draught" to one that refers to the brand name "as such"; significantly, the fact that the words are immediately followed by "beer at its best" confirms this.

For the reasons set forth in the foregoing paragraph, the Authority upholds the complaint that the broadcast of the advertisement breached Rule 2.2 of the Liquor Advertising Rules for Radio.

As to the third requirement (Rule 2.3), there is a relatively recent precedent of the Broadcasting Tribunal (Decision No: 44/88) which, considering the application of the Television Advertising Rule which is identical with Rule 2.3 of the Liquor Advertising Rules for Radio, held that the words "New Zealand's finest beer" accompanied by the "Steinlager" word and logo on a hoarding at a rugby ground breached the Rule's requirement not to describe "the qualities of the alcoholic liquor manufactured, distributed or sold by the advertiser". The Tribunal found that any reference to the quality of the product was covered by the rule and that any attempted distinction

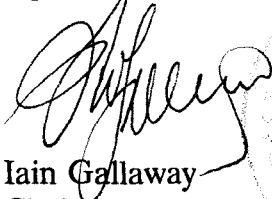


between a general statement such as "New Zealand's finest beer" and individual characteristics or attributes (eg. taste and bouquet) would be "artificial". Whilst the words "New Zealand's finest beer" uses comparative advertising, the Authority nevertheless considers that, by analogy, the word "best" is a reference to the beer's qualities and the "beer at is best" slogan would similarly breach Rule 2.3.

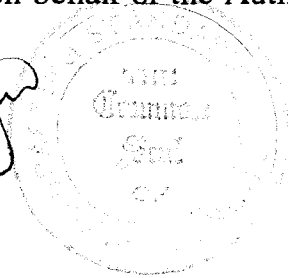
For the above reasons, the Authority upholds the complaint that the broadcast of the advertisement breached Rule 2.3 of the Liquor Advertising Rules for Radio.

Finally, the Authority again draws attention to the views expressed in Decision No: 9/90 of today's date regarding the omission of the word "Limited" in advertisements caught by the Liquor Advertising Rules for Radio.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



23 May 1990