

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 14/90

Dated the 12th day of July 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

TV3 NETWORK SERVICES
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

On 25 March TV3 broadcast live the first of three Richard Hadlee Testimonial cricket matches. The match featured a team comprised of New Zealand players playing against an invitation eleven which included some of the biggest names in world cricket.

The game was sponsored by DB Draught Limited and that company's name and slogan or logo featured prominently on billboards around the ground and on the shirts of the players.

On the front of each player's shirt was the following:

DB DRAUGHT
Beer at its Best

A logo with the words "DB Cricket" also appeared on the top left of each shirt.

On the back of each shirt, the wording was the same excepting that the logo with the words "DB Cricket" was replaced with the name of the individual player.

Mr Clifford Turner was concerned that the broadcast of shots of prominent cricketers



wearing shirts bearing the sponsoring company's name and logo amounted to "liquor advertising" and was carried out in breach of a rule that prohibits such advertising from using or referring to identifiable heroes of the young.

Mr Turner's Complaint to TV3

On behalf of the Group Opposed to Advertising of Liquor, Mr Turner wrote to the Chief Executive of TV3 on the day of the broadcast formally complaining about the programme.

Mr Turner alleged that the advertising carried on the player's shirts was "liquor advertising" and that it breached rule 4 of the Code for Advertising Alcoholic Beverages (published by the Committee of Advertising Practice) which provides that "Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young". He maintained that player's such as Richard Hadlee and Martin Crowe are undoubtedly heroes of the young; that they wore shirts which carried advertising for an alcoholic beverage, namely DB Draught beer; that the advertising carried a sales message "Beer at its Best" (which meant that the writing on the shirts was "liquor advertising" and not "sponsorship advertising"); that the broadcast of shots of players such as Hadlee and Crowe wearing these shirts meant that they were "used" to carry the advertising; and that, as a consequence, TV3 breached rule 4 of the CAP Code for Advertising Alcoholic Beverages.

TV3's Response to Mr Turner

The Chief Executive of TV3 replied to Mr Turner on 29 March in the following terms:

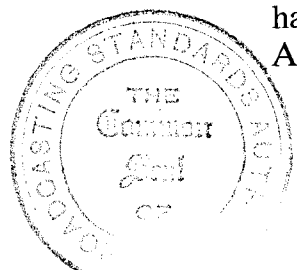
Without acknowledging any breach of the relevant regulations, there has been, in association with Dominion Breweries, certain adjustments made to apparel worn by the players which we believe should rectify any concern by people acting under a misunderstanding of the rules and regulations.

Mr Turner's Complaint to the Broadcasting Standards Authority

Mr Turner was dissatisfied with TV3's response and referred his complaint to the Authority on 10 April for an investigation and review.

In support of his complaint, Mr Turner maintained that the words on the shirts of the cricketers constituted "liquor advertising" which is defined in the CAP Code as follows:

"Liquor advertising" means the promotion of 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.



Mr Turner argued that the advertising did not appear on the players' shirts "by magic" and that it did so because "Dominion Breweries made a payment to some person, or some organisation, to ensure that the cricketers carried the advertising". He stated that Dominion Breweries was a party to the Code and that that was sufficient to bring the advertising within its scope. He reiterated his view that "Beer at its Best" was a sales message and that, as such, the advertisement could not be regarded as "sponsorship advertising" (which would have meant that it was not caught by rule 4). The advertisement was "liquor advertising" and players such as Richard Hadlee and Martin Crowe are heroes of the young: the advertisement therefore breached rule 4 of the Code.

As to the culpability of TV3 for broadcasting this advertising, Mr Turner argued that the broadcaster is bound by this Code and has a responsibility to ensure that the rules are adhered to.

The Authority referred Mr Turner's complaint to TV3 on 10 April for any comment it might wish to make. At the same time, it also sought clarification from Mr Turner of the wording on the players' shirts and subsequently conveyed Mr Turner's reply to the broadcaster.

TV3's Response to the Authority

In a letter dated 31 May, TV3 responded to the complaint enclosing a video tape covering the match in question and those that followed.

TV3's substantive response was brief and to the point:

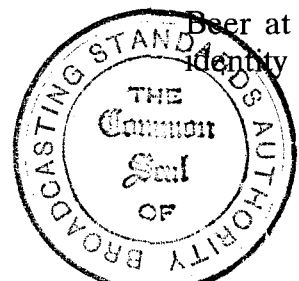
The slogan "Beer at its Best" was not appropriate and TV3 insisted it be removed after the first match.

Through oversight we had not checked the uniforms prior to the first day of broadcast, obviously it was too late to correct them for the first match.

Whether "Beer at its Best" is a sales message or not is arguable. However, TV3 was not comfortable with it and subsequently had it removed.

Decision

On viewing the opening sequences of the video tape of the first of the Richard Hadlee Testimonial Series cricket matches, Members of the Authority were struck by the visual barrage of advertising for the product of the sponsors of the series. The players' shirts all carried the words "DB DRAUGHT Beer at its Best" on the front and on the back; in addition, the background to almost every shot featured, often seemingly to the exclusion of anything else, one or more hoardings bearing the same "DB DRAUGHT Beer at its Best" advertisement. Members were thus left in no doubt as to both the identity of the sponsor and its product.



Mr Turner's allegation of a breach of rule 4 of the CAP Code for Advertising Alcoholic Beverages hinges on his assertion that the words "DB DRAUGHT Beer at its Best" constitute "liquor advertising" within the definition of that term (quoted earlier). In order to be caught by this definition, it is essential that the advertisement promotes "the sale of liquor, whether by product, brand or outlet" and that "payment is made or received by any party to this Code". On the strength of the opening sequences alone, it is clear that, on both counts, the advertisement meets these criteria: the words "DB DRAUGHT Beer at its Best" are words that promote the sale of a brand of beer and TV3, a member of the Committee of Advertising Practice, has confirmed that it received payment in connection with the broadcast.

Although TV3 did not submit that the advertisement was a "sponsorship advertisement", and therefore beyond the reach of rule 4, the Authority notes its agreement with Mr Turner's comment that the slogan "Beer at its Best", read either alone or in conjunction with the preceding words "DB Draught", constitutes a "sales message pertaining to liquor", the effect of which would have been to automatically disqualify the advertisement from seeking the shelter of the definition of "sponsorship advertising".

As liquor advertisements, these shirt-slogans were obliged to conform with rule 4 of the CAP Code. This rule is clear and to the point : it contains an express prohibition against liquor advertisements using or referring to identifiable heroes or heroines of the young.

That Richard Hadlee and Martin Crowe - the two players specifically named by Mr Turner - were identifiable heroes of the young at the date of broadcast is, in the Authority's view, beyond dispute.

Sir Richard Hadlee, Martin Crowe and the many other world-class cricketers taking part in the match are not, of course, heroes only of the young - they are also heroes to a great many New Zealanders of all ages. But since the rule does not limit the appeal of its heroes to persons who are exclusively or even mainly young people, the Authority is firmly of the view that the rule should be construed for the purposes of the present complaint as including all cricketing heroes, even although they may be shared by the young with other and older members of the sporting public.

It follows that the Authority has concluded that the words "DB DRAUGHT Beer at its Best" printed on the shirts of the cricketers taking part in the first match of the Hadlee Testimonial Series were liquor advertisements which breached rule 4 of the CAP Code for Advertising Alcoholic Beverages by using identifiable heroes of the young to promote the sale of liquor.

For the reasons set forth above, the Authority upholds the complaint.

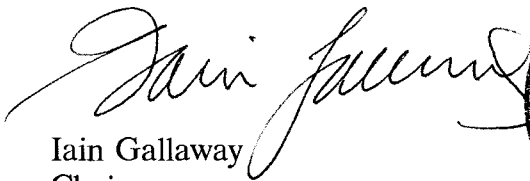
The Authority notes that it has considered the question of the imposition of a penalty upon the broadcaster, by means of an order pursuant to section 13 of the Broadcasting Act 1989, for this breach of the liquor advertising rules. Given that every close shot of a player was tantamount to the broadcast of a liquor advertisement in breach of the rule, the urge to do so was a strong one. Against that, however, were TV3's admissions that it had not, through oversight, checked the players' shirts before the match started and



that it was uncomfortable with the slogan "Beer at its Best", which it considered not appropriate, on the shirts. It had acted quickly in insisting that this slogan be removed for subsequent matches and this had been done "in association with" the sponsors.

On balance, the Authority has decided that the imposition of a penalty is not appropriate on this occasion.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



12 July 1990