

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 17/90
Dated the 5th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CLIFFORD R TURNER
of Hamilton

Broadcaster
RADIO NEW ZEALAND
LIMITED

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

DECISION

On behalf of the Group Opposed to Advertising of Liquor (GOAL), Mr Clifford Turner has referred to the Authority a complaint he first made to Radio New Zealand about a DB Draught Limited advertisement broadcast on 1ZB Hamilton at about 1.23 pm on 21 April 1990.

The Advertisement

The transcript of the advertisement reads as follows:

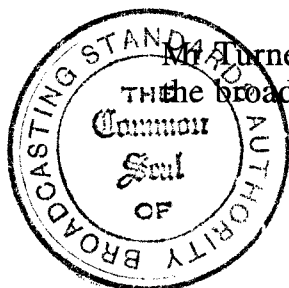
DB Draught challenge you to give it your best and WIN CASH with the DB Draught Rugby jackpot.

Jackpot forms are available now from the Matamata Green Bottle Wholesale.

DB Draught Limited, proudly supporting Waikato Rugby at it's BEST.

Correspondence

Mr Turner wrote to Radio New Zealand on the day of the broadcast complaining that the broadcast of the brand name of an alcoholic beverage had breached either Rule 1.1



(if the advertiser was the Matamata Green Bottle Wholesale liquor outlet) or Rule 2.2 (if the advertiser was DB Draught Limited) of the Liquor Advertising Rules for Radio.

Rule 1 of the Liquor Advertising Rules for Radio states:

1. Advertisements made on behalf of a wholesale or retail point of sale which refer to the availability of alcoholic liquor for sale or consumption on or off the premises may be broadcast if they meet the following requirements:

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.

...

Rule 2 states:

2. Advertisements other than those referred to in 1 above 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, may be broadcast if they meet the following requirements:

...

2.2 The advertisement does not include references to brand names of alcoholic liquor as such except to the extent that that brand name is incorporated in or identical with the name of the advertiser.

...

Radio New Zealand's Complaints Committee noted that the advertiser was DB Draught Limited and considered the complaint within the context of Rule 2.2.

The Committee also noted that the advertiser was fully named at the conclusion of the very brief advertisement and that two earlier references omitted the word "Limited". In view of the context and brevity of the announcement, the Committee was unable to agree that this omission could in any way be taken as being a reference outside the Rule's provisions. The Rule stipulates that any such references must be confined to a brand name identical with, or incorporated in, the name of the manufacturer, and the Committee concluded that the references under consideration met that requirement. The references were unlikely to be construed as anything but references, not to the liquor named "DB Draught", but to the company which was clearly in the position of a sponsor of both Waikato Rugby and the Rugby Jackpot competition. Any further doubt about the legitimacy of these two references would appear to be dispelled by reason of the fact that "DB Draught" is incorporated (in terms of Rule 2.2) in the manufacturer's name, "DB Draught Limited".

The Radio New Zealand Complaints Committee accordingly declined to uphold the complaint as a breach of Rule 2.2 and Mr Turner was so advised on 4 May. (The Committee also looked into what the position would have been if the Matamata Green



Bottle Wholesale outlet had been the advertiser and concluded, similarly, that there would not have a breach of Rule 1.1.)

Mr Turner was dissatisfied with the decision and exercised his right under section 8(a) of the Broadcasting Act 1989 to refer the complaint to the Authority for an investigation and review of the broadcaster's decision. He pointed out that Rule 2.2 permits mention of brand names "to the extent" that the brand name is incorporated in or identical with the name of the advertiser. He considered that the words "to the extent" suggested that certain limits existed and that the use of the brand name "DB Draught" in a manner which was intended to direct listeners to the Matamata Green Bottle Wholesale outlet went beyond those limits.

Mr Turner at this point also disputed Radio New Zealand's deciding the complaint in the context of Rule 2.2. In his view, it could be argued that Rule 1.1 (which covers the case of advertising on behalf of a wholesale or retail point of sale) also came into play since the advertisement was intended to steer customers to the Matamata Green Bottle Wholesale.

Radio New Zealand offered no further comments on the referral of the complaint to the Authority.

Decision

Mr Turner's complaint alleges breaches of Rule 1.1 and/or Rule 2.2 of the Liquor Advertising Rules for Radio.

Radio New Zealand Limited confirms that DB Draught Limited was the advertiser and that there was therefore no breach of Rule 1.1, i.e. the advertisement was not made on behalf of a wholesale or retail point of sale (Matamata Green Bottle Wholesale). Radio N.Z. Ltd maintains that the advertisement was solely for the purpose of publicising the rugby jackpot competition and the only products specified as being available were rugby jackpot forms. Mr Turner argued that "this advertisement was intended to steer customers" to Matamata Green Bottle Wholesale in its capacity as a liquor outlet and that accordingly the advertisement was made on behalf of a wholesale or retail point of sale.

Whilst the latter argument is no doubt true, the Authority must accept that the advertisement did in fact only refer to rugby jackpot forms. It has therefore confined its decision to the complaint relating to Rule 2.2 which permits certain forms of advertising of liquor provided they meet, inter alia, the following requirement:

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.

Radio NZ Ltd maintains that the words "DB Draught" (acknowledged to be a brand name) are incorporated in DB Draught Limited which is the name of the advertising company and therefore Rule 2.2 has been complied with. The Authority agrees that this



is correct.

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

The Authority adds the following rider:

In its previous Decisions relating to sponsorship advertisements by liquor companies, the Authority has consistently made reference to the desirability of adding the word "Limited" when referring to the advertising company and in the use of the specific word "sponsor" to describe the company's role. Statements concerning the inclusion of one or both of these words have been made in Decisions Numbers 1/90, 7/90, 9/90 and 10/90. They have been made in the hope that advertisers and broadcasters would be prepared to self-regulate without the necessity for intervention by the Authority.

It is acknowledged that the advertisement which is the subject of this complaint was broadcast before Decisions Numbers 7/90, 9/90 and 10/90 were published, but it is clear that advertisers are going to considerable trouble to prepare promotional messages cloaked in a guise which just do or do not breach the existing rules. How else can one explain or justify the use of the fatuous phrase "DB Draught challenges you to give it your best and win cash with the DB Draught Rugby Jackpot"? - it is simply an unsubtle ploy to publicise the brand DB Draught.

As has previously been pointed out, the word "supporting" does not mean "sponsoring" - there are thousands of supporters of Waikato Rugby who are not sponsors. When considering this complaint Radio NZ Ltd suggests that "the whole advertisement is a specific announcement of the jackpot competition, of where jackpot forms may be obtained and of the supporter/sponsor relationship of DB Draught Limited to Waikato Rugby". The Authority is cynical enough to suggest that the whole advertisement is specifically intended to promote the brand DB Draught which is available for purchase at the Matamata Green Bottle Wholesale liquor outlet.

The Authority is currently studying the present rules regarding the "promotion of alcohol" on both radio and television and assessing whether they are indeed satisfactory. The Authority accordingly advises that unless it becomes obvious in the immediate future that the parties responsible are prepared to accept and ensure first, that the word "Limited" or its abbreviation is added to all brand names which are incorporated in or identical with the name of the advertising company and secondly, that the words "sponsor", "sponsorship" or "sponsored by" are used exclusively when indicating sponsorship, it will insist that the rules are amended to eliminate any opportunity to take advantage of the latitude they currently offer.

Signed for and on behalf of the Authority

Gavin Gallaway

Gavin Gallaway

Chairperson

5th October 1990

