

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 35/91

Dated the 23rd day of July 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

GROUP OPPOSED TO  
ADVERTISING OF LIQUOR  
of Hamilton

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

DECISION

Introduction

The programme *Sport on One*, screened by Television New Zealand Ltd on TV1 on the afternoon of Saturday 2 March 1991, included a discussion about horse racing between the presenter, Mr Philip Leishman, and a member of the New Zealand cricket team, Mr Ken Rutherford. Mr Rutherford was wearing clothing which carried advertising for Dominion Breweries.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 2 March 1991. He stated that the broadcast showed Mr Rutherford wearing clothing carrying liquor advertising and consequently breached standards 6 and 7 of the Television Code of Broadcasting Practice, standard (i) of the Television Code of Advertising Standards and standard 4 of Code for Advertising Alcoholic Beverages.

TVNZ declined to uphold the complaint and on 9 April 1991, Mr Turner referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act



## Decision

The members of the Authority have studied the correspondence (summarised in the Appendix) and carefully considered the arguments put forward by Mr Turner on GOAL's behalf and by TVNZ in response. As a tape of the item is unavailable, the members accept that Mr Rutherford, when interviewed by Mr Leishman, was wearing clothing on which a label or logo advertising Dominion Breweries was clearly displayed.

The Authority noted the complainant's preference to appear before the Authority to give evidence or make further submissions in support of the complaint. Pursuant to s.10 of the Broadcasting Act 1989 which permits the Authority, if it thinks fit, to determine a complaint without a formal hearing, the Authority's usual practice is to determine complaints on the papers. Accepting TVNZ's position in its letter of 13 June 1991 that the Authority had sufficient material to reach a determination without a formal hearing, it saw no compelling reason to vary its usual practice in this instance.

The standards in the Television Code of Broadcasting Practice under which the complaint was made require broadcasters:

6. To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
7. To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

The relevant provisions from the Advertising Codes state:

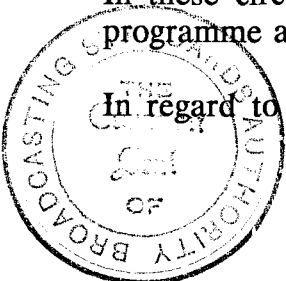
- (i) Advertisements shall be clearly distinguishable from other programme material.
4. Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young.

The Broadcasting Act 1989 includes a definition of an "advertising programme" and for a programme to meet the criterion, a payment, whether in money or otherwise, is required.

As the complainant has pointed out, the "Young Guns" advertisement promoted by Dominion Breweries has been a substantial source of advertising revenue for TVNZ. However, there is no evidence that the payment for the advertisements required the broadcast of news or human interest items involving the appearance of cricketers in clothing carrying advertising for Dominion Breweries. Indeed, not only is there no evidence beyond the complainant's suspicion, TVNZ denied any such link.

In these circumstances, the Authority decided that the item was not an advertising programme and, consequently, the Advertising Codes did not apply.

In regard to the reference to the standards in the Television Code of Broadcasting




Practice, the Authority disagreed with TVNZ and believed standard 7 was relevant and was capable of being breached. If it had been disclosed, for example, that TVNZ was filming cricketers as some undisclosed *quid pro quo* with Dominion Breweries for the advertising, this would have been a breach of standard 7 along with possible breaches of the Advertising Codes. However, in the absence of such an arrangement, the Authority decided that there was no evidence of a breach of standard 7.

Standard 6 refers to programmes dealing with political matters, current affairs and controversial questions. In the Authority's opinion, standard 6 is not relevant to the details of the item complained about. Indeed, the complaint is verging on the trivial when it alleged that an interview with a sportsperson wearing clothes displaying an advertiser's logo breached the standard requiring balance, impartiality and fairness in a programme which deals with controversial issues. Consequently, on the basis that the complaint had not established a prima facie case, the Authority declined to determine the complaint based on standard 6.

**For the reasons given above, the Authority declines to uphold the complaint that the item breached standard 7 of the Television Code of Broadcasting Practice and declines to determine the complaint based on standard 6 of the same Code and on standard (i) of the Television Code of Advertising Standards and on standard 4 of the Code for Advertising Alcoholic Beverages.**

Signed for and on behalf of the Authority

  
I.W. Gallaway  
Chairperson



23rd July 1991

## Appendix

### GOAL's Complaint to Television New Zealand Limited

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 2 March 1991. He considered that the broadcast showing Mr Rutherford wearing clothing carrying liquor advertising breached standards 6 and 7 of the Television Code of Broadcasting Practice, standard (i) of the Television Code of Advertising Standards and standard 4 of the Code for Advertising Alcoholic Beverages.

He added:

I believe that there is a connection between the large amount of money spent by Dominion Breweries for televising of its "Young Guns" commercial and the frequency of the "photo-opportunities" for cricketers appearing while wearing Dominion Breweries advertising.

### TVNZ's Response to the Formal Complaint

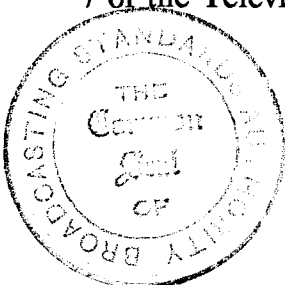
TVNZ advised Mr Turner as the secretary of GOAL of its Complaints Committee's decision in a letter dated 28 March.

It explained that the Bank of New Zealand was the sponsor of the cricket series which paid TVNZ for its sponsorship involvement. Dominion Breweries was the sponsor of the New Zealand cricket team and was not involved with TVNZ as a match sponsor. As part of its team sponsorship, DB had run a series of commercials featuring New Zealand players and had used the "Young Guns" slogan. Further, TVNZ had no control over the clothing worn by the players and Mr Rutherford, when interviewed by Mr Leishman, was wearing team issue clothing.

TVNZ continued:

There was no condition in the advertising arrangement between TVNZ Ltd and Dominion Breweries which required TVNZ Ltd to carry pictures of the players in DB uniforms. In other words there had been no money changing hands between DB and Television New Zealand to ensure the players appeared on television wearing DB logos.

As the item was not an advertising programme, the complaints laid under the advertising Codes were inapplicable. As the item was not unbalanced, partial or unfair and as it did not use deceptive programming practice, it did not constitute a breach of standards 6 or 7 of the Television Code of Broadcasting Practice.



**GOAL's Complaint to the Broadcasting Standards Authority**

As GOAL was dissatisfied with TVNZ's response, Mr Turner on GOAL's behalf referred the complaint to the Authority on 9 April 1991 under s.8(a) of the Broadcasting Act 1989.

He expressed concern about the extent of the exposure cricketers wearing clothing advertising Dominion Breweries were receiving on television and recalled that the Broadcasting Tribunal (the Authority's predecessor) had upheld a complaint about deceitful programming when Dominion Breweries had paid TVNZ to refer to the Brewery during cricket commentaries.

He pointed out that TVNZ had told him that the DB "Young Guns" advertisement had been screened 198 times and he believed that TVNZ had received substantial income from the brewer. He continued:

In view of this it would be good business for TVNZ to give Dominion Breweries a bonus in the shape of the exposure now complained of.

He agreed that TVNZ could not dictate the clothing worn by interviewees but added that TVNZ had an option not to interview "walking advertisements". Referring to standards 6 and 7, he wrote that TVNZ had not shown partiality by the frequent exposure of cricketers wearing liquor advertising and he asked whether the appearance of Mr Rutherford on a horse racing segment of *Sport on One* was deceptive programming.

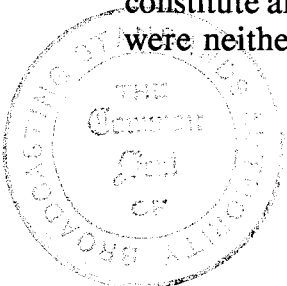
**TVNZ's Response to the Authority**

TVNZ was asked for its comments on this referral on 12 April and its reply is dated 13 June. It explained that Mr Leishman's interview with Mr Rutherford was a live broadcast for which no recording was held. However, TVNZ accepted that Mr Rutherford was wearing clothing which carried Dominion Breweries' logo or lettering.

There was, it was said, little to add to TVNZ's explanation to GOAL of 28 March and the letter continued:

There was no chain of events leading up to the Rutherford interview. His interest in horse racing is well-known, and the interview might well be described as a good, on the spot human interest filler and nothing more.

Observing that most participants in major sporting events now had a label or logo on their clothing or equipment and that filming or interviewing such participants did not constitute an advertising programme, TVNZ concluded that the grounds of the complaint were neither relevant nor capable of being breached by the item.



**GOAL's Final Comment to the Authority**

When asked by the Authority to comment on TVNZ's letter, Mr Turner as secretary of GOAL in a letter dated 16 June objected to the claimed absence of a chain of events. "Who", he asked, "made the first move to get Mr Rutherford to appear?"

He commented that by interviewing Mr Rutherford on horse racing, TVNZ displayed its contempt for the spirit of the rule in the Alcohol Advertising Code under which the complaint was made.

