

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 36/91

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
TV3 NETWORK SERVICES
LIMITED

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

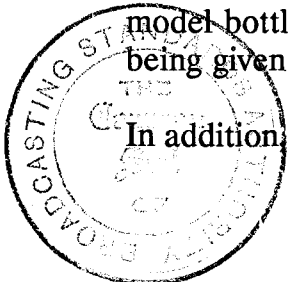
DECISION

Introduction

The DB Ironman Triathlon was broadcast by TV3 Network Services Ltd between 4.00 pm and 6.00 pm on Sunday 17 March 1991. The Dominion Breweries logo appeared on a number of occasions during the programme - in the middle of the screen at the beginning and end of each segment and irregularly, usually in the top left-hand corner, during each segment.

The secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, wrote in a letter dated 18 March to TV3 Ltd that, provided TV3 had received some payment from Dominion Breweries, the frequent appearance of the logo turned the transmission into an "advertising programme" within the terms of the Broadcasting Act 1989. He complained that the broadcast, as an advertising programme, breached standard 2 (ii) of the Television Code for Liquor Advertising by including visuals of a model bottle carrying the words "DB Export" and by showing the winner of the event being given a can of the same beer.

In addition, he complained that the Programme breached standard (i) of the Television



Advertising Standards as the broadcast did not clearly distinguish between advertising and programme material.

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 TV3 in response. The members have viewed extracts (amounting to about 40 minutes) from the programme which gave rise to the complaint.

The Authority noted Mr Turner's preference to appear before the Authority and to make submissions in support of GOAL's 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. It saw no compelling reason to vary its usual practice in this instance.

The first decision required by this complaint was whether the entire programme was, as GOAL asserted, an advertising programme. The relevant part of the definition of "Programme" in s.2 of the Act states:

"Programme" -

(a) Means sounds or visual images, or a combination of sounds and visual images, intended -

- (i) To inform, enlighten or entertain; or
- (ii) To promote the interests of any person; or
- (iii) To promote any product or service.

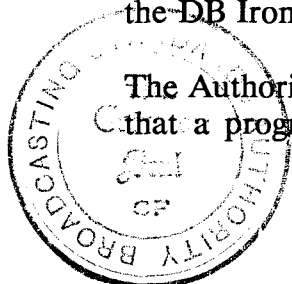
The definition of an "Advertising programme" reads:

"Advertising programme" means a programme or part of a programme intended to promote the interest of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made, whether in money or otherwise. (emphasis added)

The broadcast of the triathlon, the Authority accepted, was intended to "inform, enlighten and entertain". However, as TV3 acknowledged, it also received payment from DB Limited by way of reimbursement for the cost of the telecast.

The broadcast thus fell within the definitions of both a "Programme" and "Advertising programme". In deciding whether the Act intends for a programme to fall into both categories, the Authority noted that the definition of an "Advertising programme" does not require that the promotion of a person's interests, products or services for commercial advantage be the programme's dominant intention, and it was not so with the DB Ironman broadcast.

The Authority then considered whether sponsorship would inevitably result in a finding that a programme being examined was an advertising programme. It rejected that



because sponsorship of an event, a team or individual participants where the sponsor assists with the staging of an event, but not its broadcast, plainly would not transform the broadcast of an event into an "Advertising programme".

However, the Authority was not prepared to make a blanket decision that any sponsored broadcast, or broadcast where the broadcaster has received some payment, would automatically transform the programme into an "Advertising programme". Taking into account the requirements of the Act, in the Authority's opinion it is a matter of degree and it requires the assessment of each programme individually. Focusing on the broadcast about which GOAL complained, the Authority noted that TV3 said that DB's logo appeared at the beginning of each segment along with the word "Ironman". Mr Turner said that the logo and the word "Ironman" also appeared 10 times in a top corner of the screen during the 40 minute extract of the tape viewed by the Authority's members and that this included two appearances of the logo which lasted more than two minutes.

The Authority acknowledges that a large logo was screened at the beginning and end of each segment. If these were the only occasions on which it was broadcast, the Authority would be unlikely to regard this as sufficient for the broadcast to be defined as an "Advertising programme". However, a small logo appeared on the screen on a number of other occasions as Mr Turner maintained. Two lengthy appearances occurred while some of the leading contestants were being introduced. While some of the other material broadcast, such as the portrayal of the words DB Export on a buoy around which the competitors swam and on t-shirts and banners, could be considered to be legitimate background activity carrying the event's sponsor's logo, the extent of the visuals broadcast carrying the logo, in the Authority's opinion, was such that the programme amounted to an advertising programme within the meaning of the Broadcasting Act 1989.

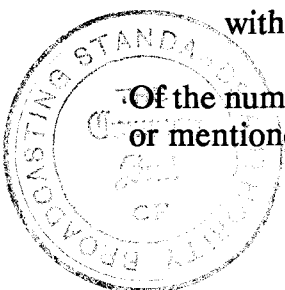
The Authority is aware of the irony inherent in its finding in that if TV3 had confined its use of the DB logo to the beginning and end of each segment, as it was apparently contracted to do, it is unlikely that the Authority would have made its ruling that the broadcast was an "Advertising programme" and thus subject to the Code under which the complaints were made. In other words, if TV3 had not been so diligent in giving DB credit for the event, it would not have crossed the threshold.

Nevertheless, as the broadcast did cross the threshold, the Authority is required to assess the programme to see if it, as GOAL asserted, breached the two advertising standards nominated.

Standard 2 (ii) of the Television Code for Liquor Advertising permits liquor manufacturers' advertisements if:

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.

Of the number of occasions in the broadcast when the words "DB Export" were displayed or mentioned, the visual of the event winner asking for a beer and being given a can of



DB Export, in the Authority's opinion, went beyond the incidental display of the event's sponsor's logo. It amounted to a breach of rule 2 (ii) as the reference was not to the advertiser, but to a brand name.

The other standard GOAL raised was standard (i) of the Television Advertising Standards which reads:

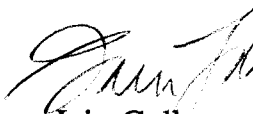
Advertisements shall be clearly distinguishable from other programme material.

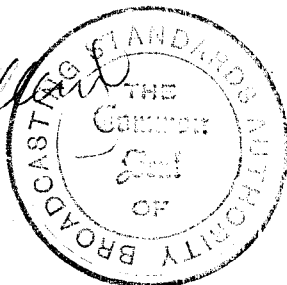
In the Authority's opinion, standard (i) is not relevant beyond the extent to which it is subsumed in standard 2 (ii) above on which the Authority has ruled. It is primarily designed to deal with a barter situation, or a "contra" deal, where an advertiser supplies services to such an extent that the broadcast moves beyond noting the services supplied to extolling the services using text or displaying visuals which could well have been prepared by an advertising agency. That was not the situation with the programme complained about. Besides the reference to the winner's desire for a beer upon completing an arduous event, neither the script nor the visuals praised DB or its products.

For the reasons outlined above, the Authority has decided that the programme was an "Advertising programme". It upholds the complaint which alleged that the broadcast breached standard 2 (ii) of the Television Code for Liquor Advertising and declines to uphold the complaint which alleged a breach of standard (i) of the Television Advertising Standards.

The Authority is currently reviewing the standards applicable to alcohol advertising and, in addition to the irony noted above concerning TV3's enthusiasm which resulted in its crossing the threshold from a "Programme" to an "Advertising programme", it also finds it ironical that the programme complained about breached standard 2 (ii) when it is the type of alcohol advertising which the Authority finds decidedly preferable to some of the current sponsorship advertising exhibiting macho themes which, nevertheless, complies with the present requirements. In view of both the mild manner in which the programme transgressed standard 2 (ii) and the irony contained in the Decision, the Authority does not make an order in this instance.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



23rd July 1991

APPENDIX**GOAL's Complaint to TV3 Network Services Limited**

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained about the screening of the DB Ironman event to TV3 Network Services Ltd in a letter dated 18 March 1991. As the Dominion Breweries logo had appeared frequently on the corner of the screen during the coverage of the triathlon, he argued that it was reasonable to assume some payment had occurred for that exposure and, consequently, the complete transmission was an "advertising programme" within the terms of the Broadcasting Act 1989.

As an "advertising programme", he said that the broadcast had breached standard 2 (ii) of the Television Code for Liquor Advertising by displaying a large model bottle bearing the words "DB Export" and by giving the winner of the event a bottle of beer upon finishing.

Further, he complained that the entire transmission breached standard (i) of the Television Advertising Standards and the rules which limit the amount of time for advertisements on television.

TV3's Response to the Formal Complaint

TV3 advised Mr Turner as the secretary of GOAL of its Complaints Committee's decision in a letter dated 3 April.

It explained that the event was sponsored by DB Ltd and:

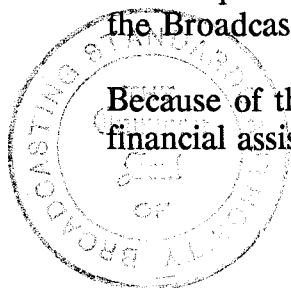
The appearance of the DB sign (the corporate logo of the sponsoring company) at the commencement of each segment, was also accompanied by the words Ironman - the sum total of the two parts making up the name of the telecast event.

The appearance of the model bottle and the beer given to the winner were legitimate background activity and not an advertisement. It concluded by pointing out that the event and the television coverage were funded by the same company and consequently standard (i) of the Television Advertising Standards was not breached.

GOAL's Complaint to the Broadcasting Standards Authority

As GOAL was dissatisfied with TV3's response, Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority on 5 April 1991 under s.8(a) of the Broadcasting Act 1989.

Because of the frequent displays of the DB Logo, he believed that TV3 had received financial assistance from Dominion Breweries to cover the event. It that was the case,



then the coverage was an advertising programme and the programme thus breached the relevant rules. He rejected TV3's distinction between sponsorship and advertising as sponsorship was not defined in the Act.

He also maintained that the whole programme was an advertising programme, then the rules which limited the amount of advertising permitted over a four hour period would also have been breached. In a letter dated 8 April, he withdrew this aspect of the complaint on learning that there were no rules covering the amount of permitted advertising time. However, he asked the Authority to consider whether there should be rules on this point.

TV3's Response to the Authority

TV3 was asked for its comments on this referral on 11 April and its reply is dated 24 April. It stated:

DB Limited, which sponsored the event, came to an arrangement with TV3 sports whereby DB Limited reimbursed TV3 for the cost of the live telecast of the event. The only commitment required on TV3's part was to screen the name of the event - DB Ironman.

We are firmly of the belief that broadcasting the name of the event complies with all regulation, including those relating to liquor advertising. The process of charging companies for coverage of sponsored events is a normal commercial business activity. The charge for production costs was the only charge made to DB Limited.

GOAL's Final Comment to the Authority

At GOAL's request, the Authority made available to it the extract of the video tape from the event (about 40 minutes) which was studied by the members of the Authority.

Mr Turner, in a letter dated 25 June, stated that the DB logo appeared about 10 times during the 40 minutes extract and for more than two minutes on two of those occasions. He stated that at these times TV3 was not broadcasting the name of the event:

... they broadcast the event after receiving financial assistance to do so from Dominion Breweries. Dominion Breweries made that payment in the knowledge that their products would receive publicity that cannot be obtained by normal television advertising.

He summarised his complaint:

If TV3 had made this broadcast without financial assistance from Dominion Breweries a complaint could not succeed. Because financial assistance was received the whole transmission becomes, I believe, an advertisement and the liquor advertising rules apply.

