

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 40/91

Dated the 20th day of September 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 *Holmes* programme, screened by Television New Zealand Ltd on TV1 on 21 February 1991, featured three young cricketers who were part of the squad from which the New Zealand team to play Sri Lanka was to be selected. The cricketers were wearing clothing which carried motifs naming Dominion Breweries.

The secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 22 February 1991. He wrote that in view of the frequency with which cricketers wearing clothing advertising Dominion Breweries appeared during current affairs programmes, he suspected that Dominion Breweries were paying for this exposure.

Further, as part of the DB "Young Guns" advertisement appeared during the item, he considered that it breached standard (i) of the Television Advertising Standards (which requires advertising to be clearly distinguishable from other programme material) and standard 4 of the Code for Advertising Alcoholic Beverages (which prohibits the use of identifiable heroes of the young in alcohol advertisements).

TVNZ did not uphold the complaint because, as no money had changed hands, the item was not an advertising programme. Thus the advertising codes did not apply. Mr Turner



referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

### Decision

The members of the Authority have studied the correspondence (summarised in the Appendix) and have viewed the item complained about. In addition, the members have viewed three slightly different versions of the DB "Young Guns" commercial.

At the time GOAL first referred its complaint to the Authority, it requested the option to appear in support of its complaint. That request was withdrawn in its letter to the Authority of 1 July 1991.

The programme complained about was one of the items on the *Holmes* programme on TV1 on 21 February 1991. It featured three young cricketers who had performed creditably in the one day matches against the Sri Lankan cricket team. Each player was in the squad from which the New Zealand test team was to be selected.

The first standard which GOAL alleged the programme breached was standard (i) of the Television Advertising Standards, which applies to the broadcasting of commercials, and reads:

- (i) Advertisements shall be clearly distinguishable from other programme material.

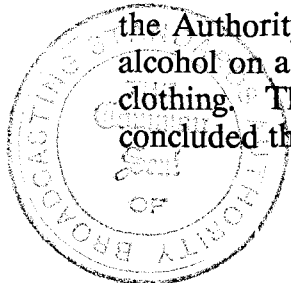
The second is standard 4 of the Code for Advertising Alcoholic Beverages which states:

4. Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young.

The Broadcasting Act 1989 defines an advertising programme as a programme for which some payment is made. TVNZ stated explicitly that no money or other consideration had passed between the Brewery and itself and therefore the codes did not apply. The Authority agrees with TVNZ that in the circumstances, standard 4, cited above, did not apply and therefore declines to determine the complaint on this ground.

Standard (i) requires the clear distinction between advertisements and other programme material. The item broadcast, first, showed the three players wearing clothing issued to the team which carried advertising for DB, and secondly, used part of the audio background from the "Young Guns" commercial promoting DB and the cricket team.

In regard to the clothing, the Authority agreed with TVNZ that only short segments of the item showed players wearing t-shirts carrying the DB emblem. Further, and although the Authority has expressed elsewhere its concern about the "incidental advertising" of alcohol on a player's clothing, it noted that the current item in no way focused on that clothing. The Authority regarded the item as legitimate magazine sports news and concluded that the clothing worn by the interviewees was incidental to the item's focus.




In regard to the item's use of the theme from the "Young Guns's" advertisement which, as GOAL pointed out, has been screened on nearly 200 occasions, the Authority considered carefully whether the featured item had clearly distinguished between advertising and the other material. The Authority accepted that news and current affairs programmes showed commercials on occasions in the body of an item (e.g. *Fair Go*, *Holmes*, and the news). That usually included the use of a caption to ensure that the distinction was unmistakable. Although a caption was not shown on this occasion, the Authority noted that the item made use only of part of the advertisement's audio track. The Authority also acknowledged that aspects of some advertisements enter into everyday music or conversation (e.g. "I Want to Teach the World to Sing"). It believed that this had occurred with the allusion in the "Young Guns" advertisement.

The Authority accepted that, for GOAL, the phrase "Young Guns" was inextricably linked to DB. However, for many others, the Authority considered that, during the cricket season at least, the phrase referred to the New Zealand cricket team and its players. Thus, in the Authority's opinion, the use by the *Holmes* programme of the "Young Guns" music theme, because it had "style and zip", to use TVNZ's phrase, did not conjure up a bare association with the DB advertisement. Rather, it evoked an understandable association with the team and with the broader cricketing milieu. Therefore, the use of the theme did not render the *Holmes*' item indistinguishable from the advertisement.

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

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



20 September 1991

## Appendix

### GOAL's Complaint to TVNZ Ltd

The secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 22 February 1991 about an item on the *Holmes* programme on 21 February which featured three members of the new Zealand cricket squad. The cricketers were wearing clothing which carried advertising for Dominion Breweries and GOAL suspected, in view of the frequency with which cricketers wearing such clothing appeared during current affairs programmes, that Dominion Breweries was paying for that exposure.

Further, as part of the DB "Young Guns" advertisement appeared during the item, he considered that it breached standard (i) of the Television Advertising Standards, which requires advertising to be clearly distinguishable from other programme material, and standard 4 of the Code for Advertising Alcoholic Beverages which prohibits the use of identifiable heroes of the young in alcohol advertisements.

### 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 1991.

As no money or other consideration had passed between TVNZ and the brewery, the item was not an advertising programme and thus it could not breach any advertising standard. Accordingly, the complaint was not upheld.

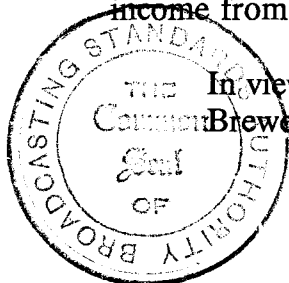
### GOAL's Complaint to the Broadcasting Standards Authority

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 to which cricketers wearing clothing advertising Dominion Breweries were appearing 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 brewery. 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 noted that TVNZ had not responded to the complaint that the item included an extract from the "Young Guns" advertisement. He agreed with TVNZ's point that it could not dictate the clothing worn by featured guests but added that TVNZ had the option of whether or not to interview "walking advertisements".

### **TVNZ's Response to the Authority**

As is its practice, the Authority asked TVNZ to comment on the complaint. The request was dated 12 April and, after some correspondence about the extent to which the item incorporated aspects of the "Young Guns" advertisement, a reply was received on 27 June.

TVNZ explained that the feature profiled three cricketers who, in segments in the item, were wearing clothing carrying the DB emblem. The feature, TVNZ continued, was of a news backgrounding nature and not an advertising programme and it would be an unreasonable intrusion to demand that interviewees change their clothing before an interview. TVNZ reaffirmed that there had been no payment between DB and itself for the broadcast of the item.

TVNZ acknowledged that the item had used the theme from the "Young Guns" advertisement but as the theme had "style and zip", that was appropriate for a magazine item.

TVNZ added that no visual elements of the commercial had been used. Further, in view of, first, the small size of the writing on the clothing, and secondly, that the camera did not focus on the t-shirts, TVNZ rejected the "walking advertisement" description.

TVNZ argued that Television Advertising Standard (i), when taken in context with the preceding introduction, was directed at the makers of advertisements, not broadcasters, and concluded:

It is submitted that to use the rule to apply to the making of a news magazine item is to misinterpret the codes and their purpose.

### **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 1 July said it was a matter of opinion whether it was "entirely appropriate" for a news item to use music from a commercial. He suggested that the relationship between the term the "Young Guns" and DB had become such that reference to that phrase now evoked DB for viewers.

