

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 49/91

Dated the 7th day of November 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CHARLES ROSA

of Wellington

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L. Dawson

DECISION

Introduction

A 30 second Orthodoxal advertisement was broadcast on TV1 on a number of occasions in early June 1991. The Advertisement began with a young woman saying "Now that I'm a grown up I don't have to be sweet and innocent anymore". The advertisement also showed, briefly, the young woman reading a "Playgirl" magazine which contained a centrefold picture of a naked male torso. The male's genitals were obscured by a black dot.

Mr Rosa complained that the advertisement breached the broadcasting standard requiring good taste and decency and the advertising standard that advertisements should not use sexual appeal in an exploitive or degrading manner to promote the sale of products.

Television New Zealand Ltd, pointing out that the advertisement used exaggerated and silly characters, considered that humour based on absurdity was the advertisement's key feature. Because of the brevity of the sequences complained about and the advertisement's humour, it ruled that the standards had not been breached.

As Mr Rosa was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members have viewed the advertisement complained about, as well as another current Orthodoxical advertisement featuring a young man rather than a young woman, and have studied the correspondence (summarised in the Appendix).

The complaint focused on the opening sequence of the advertisement in which the young woman featured was seen to be holding a "Playgirl" magazine. The next shot was of the magazine's centrefold which displayed a naked male torso in which the genitals were concealed by a black dot. Mr Rosa noted:

While the advertisement is short, the time devoted to the woman reading the Playgirl magazine and the shot of the male centrefold constitutes a major part of the advertisement.

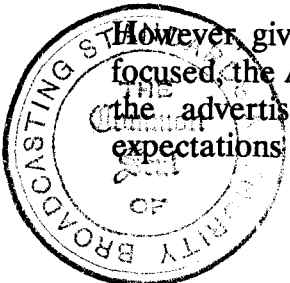
Mr Rosa's complaint was considered by TVNZ under s.4(1)(a) of the Broadcasting Act 1989 and standard 4 of the Code for the Portrayal of People in Advertising. The former requires broadcasters to maintain standards consistent with the observance of good taste and decency and standard 4 reads:

4. Advertisements should not employ sexual appeal in a manner which is exploitive and degrading of any individual or group of people in society to promote the sale of products or services. In particular, women shall not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product and children shall be portrayed in a manner which reflects their innocence and which does not exploit their sexuality.

In declining to uphold the complaint, TVNZ emphasised the brevity of the sequence complained about and the advertisement's use of humour. For these reasons, it believed that the advertisement would not have offended a broad spectrum of the community. On the other hand, Mr Rosa argued that these considerations were irrelevant as the advertisement had used sexual appeal to draw attention to an unrelated product.

The Authority considered that the advertisement's use of humour was of questionable effectiveness and of minimal relevance. Further, it believed that the sequence complained about was very brief - so much so that some members reported that they had not noticed the naked male torso when they first saw the advertisement. The Authority accepted that if the advertisement had dwelt at length upon the sequence with which the complaint was concerned, it could well have been in breach of the standards. That is, if the advertisement had focused upon a headless naked male torso, then its good taste would indeed be questionable and its use of sexual appeal to promote an unrelated product possibly degrading.

However, given the brevity of the sequence in the advertisement on which the complaint focused, the Authority concluded that its impact was insufficient to justify a decision that the advertisement, first, offended the generally accepted attitudes, values and expectations of society, or secondly, used sexual appeal in an exploitive or degrading




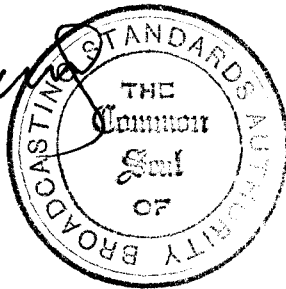
manner to promote the sale of a product.

Regarding Mr Rosa's concern about the advertisement's use of a magazine which he described as pornographic, the Authority noted magazines of that genre were available and a brief reference in an incidental and censored manner in an advertisement for a product of this type was not, in the Authority's view, a breach of the standard which requires good taste and decency.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



7 November 1991

Appendix

Mr Rosa's Complaint to Television New Zealand Ltd

In a letter dated 7 June 1991, Mr Rosa complained to TVNZ Ltd about an Orthoxical advertisement which had been screened on TV1 on the evenings of 3, 4 and 6 June. He stated that the advertisement breached the broadcasting standard which requires broadcasters to observe good taste and decency and the advertising standard which requires advertisements not to use sexual appeal in an exploitive or degrading manner to promote the sale of products.

He described the commercial:

The Orthoxical advertisement at issue begins with a woman reading Playgirl magazine while remarking that "now she is grown up she does not have to be sweet and innocent anymore". The advertisement then cuts to a shot of the male centrefold in the magazine. The shot of the male model shows him to be fully naked except for a black dot which serves to conceal his genitals. While the advertisement is short, the time devoted to the woman reading the Playgirl magazine and the shot of the male centrefold constitutes a major part of the advertisement.

He stated that the advertisement breached the good taste and decency requirement by advertising "Playgirl" which he said was a pornographic publication. The good taste and decency standard was also breached by showing the naked male centrefold. He continued:

The covering up of the male models genitals does not diminish in any way the fact that depicting men or women in this manner is both derogatory of and demeaning to men and women as the case may be. As a male viewer, I find the manner in which the male body is depicted in the Orthoxical advertisement to be offensive. (His emphasis)

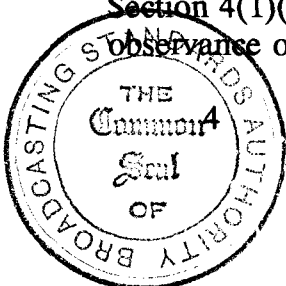
He added that he could not understand the link between the publication displaying a male body and the medication being advertised. He concluded that the advertiser was using male sexual appeal to promote the product.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Rosa of its Complaints Committee's decision in a letter dated 5 August 1991. The complaint had been considered under s.4(1)(a) of the Broadcasting Act 1989 and standard 4 of the Code for the Portrayal of People in Advertising.

Section 4(1)(a) requires broadcasters to maintain standards consistent with the observance of good taste and decency and standard 4 reads:

Advertisements should not employ sexual appeal in a manner which is



exploitive and degrading of any individual or group of people in society to promote the sale of products or services. In particular, women shall not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product and children shall be portrayed in a manner which reflects their innocence and which does not exploit their sexuality.

TVNZ said that the advertisement was one of a series which used humour and "highly exaggerated and obviously silly characters" to convey the message that adults could now use Orthoxical in a capsule form. TVNZ agreed with Mr Rosa's description of the advertisement although it stressed the brevity (2½ seconds) of the sequence which identified the magazine and its centrefold.

Applying the broadcasting standards, TVNZ stated that it was not offensive to depict the magazine cover. It pointed out that the centrefold photograph of the male had been censored "to obliterate anything that would shock the unsophisticated" and that humour had been used to capture the viewer's attention. TVNZ concluded:

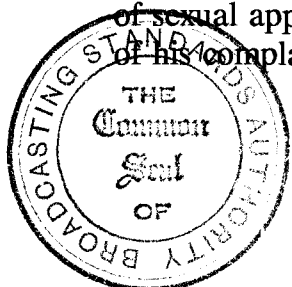
Because of the brevity of the sequence, and this overlay of humour, the Committee had difficulty in believing that the advertisement would offend a broad spectrum of the community. Consequently it found it difficult to conclude that the taste and decency provision of the Act had been breached. Likewise it had difficulty in finding that sexual appeal was being employed in a manner that was degrading or exploitive of any individual or group in society. Accordingly your complaint was not upheld.

Mr Rosa's Complaint to the Broadcasting Standards Authority

As Mr Rosa was dissatisfied with TVNZ's response, in a letter dated 6 August he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He confirmed the basis for his complaint, added a newspaper report of a decision by the Advertising Standards Complaints Board which upheld a complaint about a paving company depicting a scantily clad woman and using the phrase "Easy to Lay", and stated that TVNZ had both misinterpreted the provisions of the standards and given undue emphasis to the aspect of humour of the advertisement.

He argued that pornographic magazines were exploitive and degrading by their very nature and that their use in an advertisement could not be dismissed as an aspect of absurd humour. He also argued that standard 4 did not require that a broad spectrum of the community be offended: it prohibited the exploitive or degrading use of sexual appeal to promote the sale of products. That, he maintained, was the basis of his complaint under that standard about the Orthoxical advertisement.



TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request is dated 13 August and TVNZ's reply is dated 12 September.

TVNZ began by emphasising the need to assess the entire 30 second advertisement whereas the complaint focused on a small portion of it. It added that there had been a brief glimpse of the "Playgirl" masthead and the "peep" at the centrefold was part of the advertisement's "growing up" theme. TVNZ argued that those small segments, in context, could not possibly breach the good taste and decency standard and, further, it dismissed as tenuous the argument that standard 4 was relevant.

TVNZ enclosed a copy of the advertisement which had featured in the Advertising Standards Complaints Board decision and in view of its explicit sexual innuendo, drew a distinction between it and the Orthoxical advertisement.

The complainant's comment to the Authority about its Complaints Committee's decision, TVNZ added, misinterpreted that decision. It also provided another advertisement used by Orthoxical to indicate their humorous and frivolous nature.

TVNZ concluded:

While it is accepted that recognition of what is agreeable or even acceptable humour varies greatly within the community, it is submitted that what is conveyed in this advertisement does not dent the taste and decency provision nor does it in any obvious way tangle with the code relating to people considerations.

Mr Rosa's Final Comment to the Authority

When asked to comment on TVNZ's letter, Mr Rosa's closely argued reply of 19 September repeated a number of the points he had made earlier. He concluded by summarising the seven points made in his letter.

In summary, I would submit that the opening sequence of the advertisement is an obvious breach of both good taste and decency and clause 4 of the Code for Portrayal of People in Advertising. If the advertisement used Playboy magazine and showed a nude female model instead, I would lay the same complaint under the Act and the Code of Practice on the basis that it is not in good taste, it exploits and degrades the human form in promoting the sale of the product and because it uses sexual appeal to draw attention to an unrelated product. Arguments as to humour and the overall image are superfluous if the opening sequence of the advertisement, or any part thereof, is in breach of Broadcasting Act or the Codes of Practice governing advertising.

