

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 56/91

Dated the 4th day of December 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.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

The DB Steeplechase was broadcast live from Ellerslie by TV1's *One World of Sport* on Saturday 3 June 1991.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Limited in a letter dated 3 June 1991. He stated that the introduction suggested that Dominion Breweries had made a contribution to the cost of the transmission of the programme. During the broadcast, billboards were seen carrying the wording "DB Draught Beer at its Best". If DB had contributed to the cost of the transmission, he continued, the broadcast was an advertising programme within the terms of the Broadcasting Act 1989 and thus the appearance of the billboards breached standard 2 (ii) and (iii) of the Television Code for Liquor Advertising.

TVNZ, explaining that the Auckland Racing Club, not DB, had contributed to the cost of the transmission, declined to uphold the complaint as the programme was not an advertising programme. It described the reference to Dominion Breweries Limited in the item's introduction and conclusion as a sponsorship credit.

On 8 July 1991, Mr Turner referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989 as he was dissatisfied with TVNZ's



decision. He argued that, as the Auckland Racing Club had contributed to the costs of the transmission and as the Club held a licence to sell liquor, TVNZ had broadcast an advertising programme that breached the provisions of the Television Code for Liquor Advertising.

Decision

The members of the Authority have viewed a tape of the programme (supplied by the complainant) and have read the correspondence (summarised in the Appendix). The Secretary of GOAL, Mr Cliff Turner, expressed his preference to make oral submissions to the Authority as he considered the decision might set an important precedent, particularly about the Broadcasting Act's definition of what constitutes an advertising programme. 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. Concerning this complaint, it believes, in agreement with TVNZ, that it has sufficient material to reach a determination without a formal hearing.

In addition, in regard to GOAL's point about a precedent setting decision, the Authority records that the Alcohol Advertising Codes are presently under review and the new Code addresses the point about incidental advertising which seems to be one of the complainant's principal concerns on this occasion. Indeed, this complaint highlights yet again for the Authority the complex minefield of alcohol advertising and is an illustration of the methods which are currently employed to circumvent the present Codes. It is an extremely valuable example of the type of issue which the Authority has been required to confront while examining the broadcasters' proposals about the matters to be included in the revised Code.

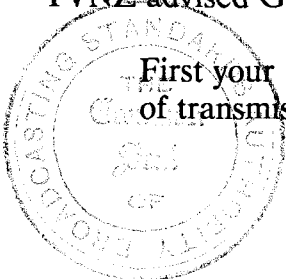
The complaint alleged a breach of standards 2 (ii) and (iii) of the Television Code for Liquor Advertising. As the Code applies only to liquor advertisements, the Authority considered, first, whether TV1's broadcast of the DB Steeplechase on 3 June 1991 fell within s.2 of the Broadcasting Act 1989 which defines an "advertising programme". It provides:

"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.

Mr Turner, on GOAL's behalf, believed the broadcast to be an advertising programme in view of TVNZ's recent reluctance to broadcast horse racing on the grounds of financial stringency and in view of the credit for Dominion Breweries Limited given in the broadcast.

TVNZ advised GOAL of its Complaints Committee's decision on the point in this way:

First your assumption that Dominion Breweries made a contribution to the cost of transmission was incorrect. The Committee was informed that a contribution



to costs was paid by the Auckland Racing Club. Furthermore, the reference to Dominion Breweries Limited proudly presenting the live coverage amounted to a sponsorship credit. Consequently, the Committee was unable to conclude that the broadcast could be construed as being an advertising programme. In such circumstances the rules you cited could have no application.

The Authority agreed with GOAL when it objected to the accuracy of the final two sentences. The fact that the Auckland Racing Club made a contribution to the costs to ensure the broadcast of the event (whether at market rate or on some special terms), in the Authority's opinion, brought the transmission within the statutory definition of an advertising programme. The Authority considered that the fact that the Auckland Racing Club's contribution was not mentioned during the broadcast was not relevant in deciding that point.

Having concluded that the broadcast was an advertising programme and thus the Television Code for Liquor Advertising was applicable, the Authority examined the standards raised by GOAL. They read:

2. Advertisements ... 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:
 - (ii) 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.
 - (iii) No descriptions of the qualities of the alcoholic liquor manufactured, distributed or sold by the advertiser are included in the advertisement.

GOAL maintained that standard 2 was apposite as the Auckland Racing Club sold alcohol, adding that the Auckland Licensing Authority had confirmed that the Club held a licence to do so. As noted, the Authority decided that the fact that the broadcast did not mention that the Club was the advertiser did not impinge on its conclusion that the Advertising Code applied. However, although accepting that the Code applied, the Authority was divided as to whether standard 2 in particular was applicable. On the one hand, the Authority noted that standard 3 set out specific rules for advertisements made by or on behalf of "any cultural recreational sporting or community service organisations". The inclusion of this standard, it was argued, suggested that standard 2 only applied to an advertisement made on behalf of bodies whose principal business is the manufacture, distribution or sale of liquor. As the sale of liquor by the Auckland Racing Club is a sideline activity to its principal business of promoting horse racing, some members of the Authority concluded that standard 2 did not apply. On that basis, they argued that the complaint should not be upheld.

On the other hand, some members argued that standard 2 was applicable as, while the Auckland Racing Club could be said to be a sporting organisation, it is also a substantial



business which sells alcohol. It was thus not exempt from standard 2. Following that line of reasoning, the Authority examined the broadcast to see whether it breached the provisions of either standard 2 (ii) or 2 (iii).

Standard 2 (ii) prohibits the reference to brand names of alcohol except where the brand name is incorporated into the advertiser's name. The programme's credits only referred to "Dominion Breweries Limited" and to the "DB Steeplechase". Nevertheless, the broadcast of the race included the incidental presence of background billboards containing the words "DB Draught Beer at its Best". Standard 2 (iii), for the purpose of this complaint, prohibits descriptions in the advertisement to the qualities of the liquor sold by the advertiser, in this instance, the Auckland Racing Club. As noted, the broadcast included the incidental presence of background billboards referring to the qualities of DB's draught beer.

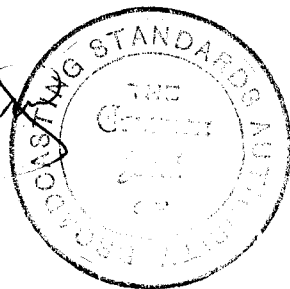
The Authority, following its reasoning in Decision No: 36/91 (GOAL's successful complaint against TV3's broadcast of the DB Ironman event), decided, first, that the billboards referred to both a brand name and the qualities of liquor. In deciding, however, whether the standards had been breached, the Authority in addition considered whether the incidental portrayal of the billboards formed part of the advertisement. After a careful examination of the video tape of the full event, the Authority concluded that the presence of the billboards was sufficiently peripheral to the broadcast to support the conclusion that they were neither so markedly obtrusive nor of sufficient prominence to be considered part of the programme. Accordingly, the Authority concluded that the broadcast did not breach standards 2 (ii) or (iii) of the Television Code for Liquor Advertising.

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

The Authority records, again, its concern about both liquor and sponsorship advertising. In developing a new code in conjunction with the broadcasters, the Authority notes that different requirements will apply to liquor and sponsorship advertising. It further notes that it will have little sympathy for broadcasters if they allow the distinction between these advertisements to be blurred in an attempt to promote the advertising of liquor under the guise of sponsorship.

Signed for and on behalf on the Authority


Iain Gallaway
Chairperson



4 December 1991

Appendix

GOAL's Complaint to TVNZ Limited

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 3 June 1991 about the live broadcast of the DB Steeplechase from Ellerslie in that afternoon's *One World of Sport*.

The item's introduction included the following words:

One World of Sport and Dominion Breweries Limited proudly present the coverage of the DB Steeplechase from Ellerslie.

These words, Mr Turner wrote, suggested that DB made a contribution to the cost of the transmission. During the item billboards bearing the words "DB Draught Beer at its Best" were seen.

If DB had contributed to the cost of the item's transmission, Mr Turner continued, the whole item was an advertising programme within the terms of the Broadcasting Act 1989 and the appearance of the billboards breached standards 2 (ii) and (iii) of the Television Code for Liquor Advertising.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Turner, as GOAL's secretary, of its Complaints Committee's decision in a letter dated 3 July 1991.

It acknowledged GOAL's point that the complaint would be valid if the broadcast was an advertising programme as defined in the Act. It continued:

First your assumption that Dominion Breweries made a contribution to the cost of the transmission was incorrect. The Committee was informed that a contribution to costs was paid by the Auckland Racing Club. Furthermore, the reference to Dominion Breweries Limited proudly presenting the live coverage amounted to a sponsorship credit. Consequently, the committee was unable to conclude that the broadcast could be construed as being an advertising programme. In such circumstances the rules you cited could have no application.

In the circumstances, TVNZ declined to uphold the complaint.

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 8 July 1991 under s.8(a) of the Broadcasting Act 1989.

He argued, because TVNZ had shown very little horse racing on television recently apparently because of financial stringency, it must have received substantial support to broadcast the DB Steeplechase. Further, he said, the Auckland Racing Club operated bars which probably sold Dominion Breweries products. Consequently, he wrote:

The Auckland Racing Club is thus subject to Rule 2 of the TV Liquor advertising code because it is a body corporate which sells alcoholic liquor. If the transmission can be shown to be an advertising programme item it seems to me that the complaint must succeed because a brand name was frequently shown on the screen.

It could perhaps be argued that my complaint should fail because it named the wrong advertiser. However, I believe that the misleading words "One World of Sport and Dominion Breweries proudly present live coverage of the 1991 DB Steeplechase from Ellerslie" provide me with sufficient excuse for assuming that Dominion Breweries gave financial assistance for the transmission. I ask Authority members to note that nowhere in the transmission did the words Auckland Racing Club appear.

TVNZ's Response to the Authority

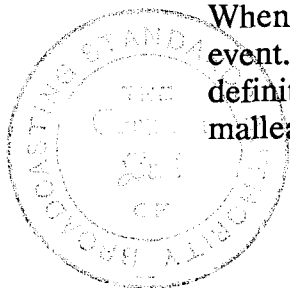
TVNZ was asked for its comments on the complaint on 11 July and its reply is dated 12 September.

It explained that as TVNZ had not received any payment or other consideration from Dominion Breweries, the broadcast was not an advertising programme within the meaning of s.2 of the Broadcasting Act 1989. It continued:

The coverage of the event was funded by the Auckland Trotting Club. This should not be confused with the opening and closing sponsorship tags for which payment was made directly to the company by Dominion Breweries.

Such sponsorship credit, it added, corresponded with the system applying to the coverage of many sporting events. It described as tortuous and absurd GOAL's argument that the Auckland Racing Club was implicated as the advertiser because it sold Dominion Breweries products. That fact that an advertiser might provide small assistance to TVNZ by way, for example, of catering did not justify describing the entire programme as an advertising programme. TVNZ stated:

When a telecasting arrangement is entered into it is for the coverage of an event. Furthermore, it is submitted that to suggest otherwise is to give the definition or interpretation of an advertising programme an elasticity or malleability which would make an ass of the concept of the law and the



feasibility of compliance.

TVNZ maintained that the standards in the Television Code for Liquor Advertising did not apply as the programme did not come within the Act's definition of an advertising programme. It concluded by opposing GOAL's submission for a formal hearing as it did not believe that the decision would set an important precedent and felt that its written submissions dealt comprehensively with all the relevant points.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 24 September Mr Turner on GOAL's behalf pointed out that TVNZ had recently provided minimal coverage to horse racing. He continued:

This paucity of televised racing lends weight to GOAL's contention that the DB Steeplechase would not have been televised unless a substantial contribution was made by some organisation to the cost of covering the event.

TVNZ, he added, had admitted that coverage of the event was funded by the Auckland Racing Club. Thus, he said, the programme was an advertising programme within the terms of the Broadcasting Act 1989.

Having dealt with TVNZ's point which had at first denied that the programme was an advertising programme, he then addressed its contention that, even if the programme was an advertising programme, the Code for Liquor Advertising did not apply as the funding did not come from a manufacturer, distributor or seller of liquor. As evidence that TVNZ's contention was incorrect, Mr Turner stated that he had confirmed with the Auckland Licensing Authority that the racing Club held a licence to sell liquor.

He concluded:

If the Authority accepts that the coverage of the race was an advertising programme then I believe it must accept that Rule 2(ii) and 2(iii) of the code were breached. The advertising programme referred to a brand of alcoholic liquor, DB Draught, and also referred to the qualities of liquor in the slogan "Beer at its best".

It is true that GOAL's original complaint to TVNZ did not identify the true advertiser but I believe that the complaint should not fail on those grounds. There was nothing in the broadcast to give the viewer any inkling that the programme had been funded by the Auckland Racing Club.

