

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 62/91

Dated the 10th 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

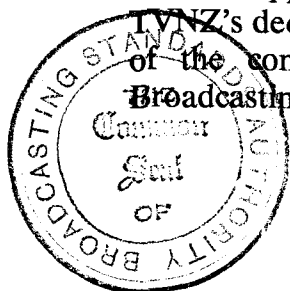
DECISION

Introduction

As part of the build-up for the Rugby World Cup, Steinlager Ltd sponsored a series of television advertisements known as "The Boys in Black". Each advertisement featured the playing career of an All Black.

The Group Opposed to Advertising of Liquor (GOAL) complained to Television New Zealand Ltd that the advertisement featuring the All Black Grant Fox also showed billboards around a playing field which carried the words "Steinlager" and "New Zealand's Finest Beer". The advertisement, it said, thus breached the Television Code for Liquor Advertising. Further, as the All Blacks were heroes of the young, the advertisement breached the Code for Advertising Alcoholic Beverages.

TVNZ declined to uphold the complaint, first, as the advertisement did not contain any substantive breaches of the Television Code, and secondly, because the Advertising Code was not applicable to a sponsorship advertisement. As GOAL was dissatisfied with TVNZ's decision about the complaint under the Television Code, it referred that aspect of the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



## Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). The Authority has recently issued proposed new codes relating to liquor advertising on television and thus makes no comment on GOAL's point in its letter of 13 November 1991 about liquor advertising masquerading as sponsorship advertising.

GOAL alleged that the "Steinlager" sponsored advertisement featuring the All Black Grant Fox, as it carried a glimpse of a billboard at a rugby ground carrying the words "Steinlager" and "New Zealand's Finest Beer", breached standards 2(ii) and 2(iii) of the Television Code for Liquor Advertising. They state that advertisements made on behalf of a liquor manufacturer may not include references to brand names other than names which are identical with the advertiser's, or descriptions of the qualities of the alcohol.

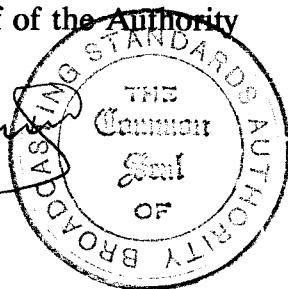
TVNZ argued that as the portrayal of the billboard was brief and as the viewer's attention would be on the rugby action, the complaint should be dismissed as trivial.

In Decision No: 56/91 (GOAL's unsuccessful complaint that TVNZ's broadcast of the DB Steeplechase breached the same standards), the Authority decided that the portrayal of signage, if substantially peripheral to the main event, did not constitute a breach of the standards. The portrayal of the signage in this advertisement was considered more difficult to detect than the signage in the complaint about the steeplechase. Indeed, some of the Authority's members required the offending sign to be pointed out to them. The Authority acknowledges GOAL's argument that background material may become more obvious after repeated viewings of an advertisement. Nevertheless, the Authority believed that would not occur with this advertisement as the sign complained about was of such low and momentary visibility. In the circumstances, the Authority concluded that TVNZ's submission, that the complaint be dismissed as trivial because of the total insignificance of the offending advertisement, was warranted.

**For the reasons set forth above, the Authority dismisses the complaint as trivial under s.11 of the Broadcasting Act 1989.**

Signed for and on behalf of the Authority

*Iain Gallaway*  
Iain Gallaway  
Chairperson



10 December 1991

## Appendix

### GOAL's Complaint to TVNZ Ltd

The secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Limited in a letter dated 14 September 1991 about "The Boys in Black" advertisement, sponsored by Steinlager Ltd, broadcast by TV1 at 4.35pm on 14 September.

He said that the advertisement showed billboards around a rugby ground carrying the words "Steinlager" and "New Zealand's Finest Beer" and, consequently, the advertisement breached standards 2(ii) and 2(iii) of the Television Code for Liquor Advertising. They state that advertisements which incorporate the name of a liquor manufacturer may be shown if:

- (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 also stated that as the All Black featured, Grant Fox, was undoubtedly a hero of the young, the advertisement breached Rule 4 of the Code for Advertising Alcoholic Beverages. Rule 4 states:

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

### 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 18 October 1991.

TVNZ explained that the advertisement was one in a series of fifteen featuring the current All Blacks which was part of the overall "Steinlager" sponsorship contract for the Rugby World Cup. Although, care had been taken to avoid incidental signage containing liquor advertising, the advertisement complained about included billboards carrying the words noted. However, TVNZ added, they were seen only briefly and it is "highly doubtful whether viewers would have taken in and absorbed what was in the background of the scoring action". It continued:

If anything, the Committee considered there may have been a technical breach but it was so inconsequential, and of such a seemingly frivolous and trivial nature, the Committee did not consider it would be realistic to uphold the complaint. Such incidental signage, it was considered would have been beyond



reasonable comprehension given the circumstances.

As the commercial was a sponsorship advertisement, TVNZ stated that the Code for Advertising Alcoholic Beverages was inapplicable.

### GOAL's Complaint to Broadcasting Standards Authority

As GOAL was dissatisfied with TVNZ's response about the complaint made under the Television Code, Mr Turner on GOAL's behalf referred the complaint to the Authority on 23 October 1991 under s.8(a) of the Broadcasting Act 1989.

He claimed that TVNZ, in its efforts to avoid incidental advertising, had admitted that the display of liquor billboards would amount to a breach. The standards did not, as TVNZ now maintained, allow fleeting appearances. He acknowledged that viewers might miss the signage during the first screening of the advertisement. However, they could well become aware of it during later viewings and he quoted the Broadcasting Tribunal decision 44/88 in support of the contention that details are more likely to be noticed in repeated broadcasts than during one presentation.

GOAL did not refer to the Authority its complaint under the Code for Advertising Alcoholic Beverages.

### TVNZ's Response to the Authority

TVNZ was asked for its comments on 29 October and its reply is dated 11 November.

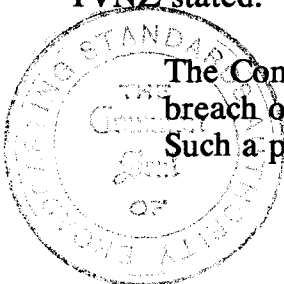
The letter began:

At the outset it needs to be appreciated that out of the 60-second commercial it is a split second incidental peep, or fleeting glimpse of a Carisbrook hoarding, which is the key element of this complaint. Furthermore, it is not a focal point. Had the advertisement been designed to promote a sales message for Steinlager Ltd, as the complainant seems to believe, the brewery would, it is submitted, have had a legitimate demand for a refund from the advertising agency responsible.

Viewing of the sign complained about, TVNZ added, required dedicated concentration. The situation in the Broadcasting Tribunal Decision was quite distinct from the present example as the billboard was shown comprehensively on that occasion.

TVNZ stated:

The Company does not believe that there has been or could be a substantive breach of the codes in question unless there was a freeze-frame approach. Such a ploy would be unrealistic and contrary to the way viewers would have



seen the excerpt.

In the circumstances, TVNZ argued that the Authority should dismiss the complaint as frivolous, vexatious or trivial.

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

When asked to comment on TVNZ's response, in a letter dated 13 November Mr Turner on GOAL's behalf said the Authority would have to ask itself:

How long can a sales message appear before it becomes a justifiable cause of complaint?

He argued that if a sales message appeared, the Authority should interpret the standard strictly. He also disputed TVNZ's description of the advertisement as a "low-key" sponsorship message, stating that Steinlager Ltd took advantage of what he described as the "artificial" distinction between sponsorship and liquor advertising.

