

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 63/91

Dated the 10th day of December 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

JANNE WILCOX-CLARKE

of Invercargill

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

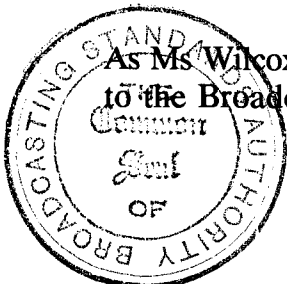
An advertisement shown by Television New Zealand Ltd on 27 - 28 July 1991 depicted a tennis player serving a ball directly at the camera. The screen went blank and the top of a can carrying the words Big Serve Can appeared. The DB logo and the words Dominion Brewery Limited then appeared at the top of the screen. The following words were spoken:

Only one New Zealand brewer gives you more beer in every can. So if you are not getting a big serve, what are you getting?

Ms Wilcox-Clarke, the Health Educator with the Southland Area Health Board, complained to TVNZ that the advertisement contravened standard 6 of the Code for Advertising Alcoholic Beverages in that it implied a link between sporting success and liquor consumption.

TVNZ's Complaints Committee declined to uphold the complaint as the advertisement neither indicated sporting success nor suggested that beer was a necessary component for it.

As Ms Wilcox-Clarke was dissatisfied with TVNZ's decision, she referred her complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the advertisement to which the complaint relates and have read the correspondence (summarised in the Appendix).

Ms Wilcox-Clarke complained that the Dominion Breweries' advertisement, known as the Big Serve advertisement, breached standard 6 of the Code for Advertising Alcoholic Beverages. Standard 6 provides in part:

Liquor advertisements may depict the consumption of liquor as part of a friendly and happy social environment. However, it is unacceptable to suggest that the consumption or presence of liquor will create a significant change in mood or environment. The depiction of liquor as part of a celebration shall not imply that the beverage is the cause of success or achievement. Further, it is unacceptable to depict the consumption or presence of liquor as a necessary component of the achievement of personal, business, social, sporting or sexual success.

The Authority acknowledges that the Advertising Standards Complaints Board has considered a complaint about the Big Serve advertisement under standard 6 and, in addition, under standard 2 of the Code and under the Advertising Code of Ethics. The Authority has read that decision in which the complaints were not upheld. The Board's conclusions are included as part of TVNZ's response to the Authority recorded on p.ii of the Appendix.

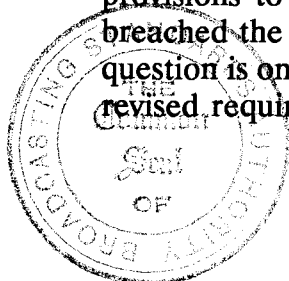
The Authority, of course, is not bound by the Board's decisions. Moreover, the Authority, unlike the practice adopted by the Board, is required by s.15(2) of the Broadcasting Act 1989 to give reasons for its decisions. In view of this requirement, the Authority examined whether the advertisement depicted either the presence or consumption of liquor as a necessary component for the achievement of sporting success.

The advertisement depicted a can, admittedly a can of beer, and alluded to tennis, both visually and verbally. The Authority emphasises that the relationship between the presence of liquor and the sport was one of allusion. The advertisement did not imply or suggest, as is required by standard 6, that the presence of liquor, let alone its consumption, was a necessary component of participation in the sport, let alone successful participation.

In one of its conclusions, the Advertising Standards Complaints Board wrote:

The advertisement took the technical provisions and the spirit of the Code to their limits. The real question was whether the limits had been exceeded especially in the area of social responsibility.


The Authority concurs with the comment that the advertisement took the technical provisions to their limits but, contrary to the Board, believes that the advertisement breached the spirit of the existing codes. The approach taken by the advertisement in question is one which the Authority has attempted to prohibit in the recently announced revised requirements for liquor advertising on radio and television. Nevertheless, the

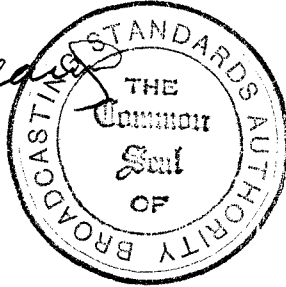


advertisement did not breach the current standard's technical requirements.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



10 December 1991

Appendix

Janne Wilcox-Clarke's Complaint to Television New Zealand Limited

In a letter dated 19 August 1991, Ms Wilcox-Clarke, the Health Educator with the Southland Area Health Board, complained formally to TVNZ Ltd about an advertisement for Dominion Breweries Ltd which was shown on the 27 - 28 July 1991. The advertisement, she wrote, contravened standard 6 of the Code for Advertising Alcoholic Beverages as it implied a link between sporting success and liquor consumption.

TVNZ's Response to the Formal Complaint

TVNZ acknowledged to Ms Wilcox-Clarke receipt of her complaint in a letter dated 27 August. TVNZ added that its Complaints Committee had considered two formal complaints about the same advertisement at its meeting on 21 August. One was made under standard 2 (ii) of the Television Code for Liquor Advertising and the other under the standard noted by Ms Wilcox-Clarke.

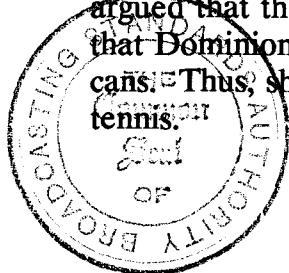
The Committee had declined to uphold both complaints. With regard to the complaint under standard 6, it wrote:

This clause states that it is unacceptable to depict liquor as a necessary component of the achievement of sporting success. However, the committee could find nothing in the advertisement to indicate sporting success, nor to suggest that beer was a necessary component of anything. It could not see how this clause could be breached by the advertisement.

TVNZ observed that it had been permissible to advertise beer on television for some 20 years but, because of restrictions on brand advertising and descriptions of qualities, such advertising had been uncommon. "The DB advertisement", it continued, "was an almost unique case because the brewery was able to say 'we put more beer into every can' without reference to brand or qualities."

Janne Wilcox-Clarke's Complaint to the Broadcasting Standards Authority

Ms Wilcox-Clarke regarded TVNZ's letter as its formal response to her complaint and in a letter dated 10 September 1991 referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. She reiterated her concern about the association between the consumption and presence of liquor and sporting success, adding that TVNZ had not interpreted her complaint correctly. She argued that the tennis player, as he was able to hit a "big serve", showed talent and that Dominion Breweries believed that beer was a necessary component of the bigger cans. Thus, she said, liquor was shown to be a necessary component of successful tennis.



TVNZ's Response to the Broadcasting Standards Authority

As is its practice, the Authority sought the broadcaster's response to the complaint and TVNZ's reply is dated 8 November 1991. It explained that its letter of 27 August to the complainant was for the complainant's information and had not been TVNZ's formal response to the complaint. However, when the Complaints Committee had later considered the complaint formally, it had reached the same decision as it had on the earlier occasion and thus there seemed no reason why the Authority should not proceed on the information before it.

In addition to the reasons set out in its letter of 27 August for not upholding the complaint, TVNZ attached a decision of the Advertising Standards Complaints Board which had considered complaints about the advertisement laid under the Advertising Codes of Ethics and standards 2 and 6 of the Code for Advertising Alcoholic Beverages. The Board, in not upholding the complaint, concluded:

- The advertisement was a liquor advertisement and came within the ambit of the Code for Advertising Alcoholic Beverages as well as the Advertising Code of Ethics.
- The advertisement did not breach Rule 2 or Rule 6 of the Code for Advertising Alcoholic Beverages nor the Second Basic Principle of the Code of Ethics.
- The advertisement took the technical provisions and the spirit of the Code to their limits. The real question was whether the limits had been exceeded especially in the area of social responsibility.
- The screening of the advertisement at a time when the Broadcasting Standards Authority Review determination was imminent may have been commercially irresponsible to the advertising industry but this did not amount to social irresponsibility.

Janne Wilcox-Clarke's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a fax dated 13 November 1991, Ms Wilcox-Clarke, after commenting in a dismissive manner about the procedural difficulties raised by TVNZ, asked the Authority to consider whether the advertisement suggested that the consumption of liquor was a necessary component of sporting success.

