

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 30/92

Dated the 4th day of June 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CAROL McINTOSH

of Nelson

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

A montage of shots showing achievement in a number of sports featured in a Lion Red Big Time sponsorship advertisement broadcast by Television New Zealand Ltd on 29 November 1991.

Ms McIntosh from the Community Health Services of the Nelson-Marlborough Area Health Board complained to TVNZ that the advertisement breached the rules in the Code for Advertising Alcoholic Beverages which prohibit both directing advertisements at the young and suggesting that alcohol is a necessary part of social success.

TVNZ declined to uphold the complaint. It pointed out that the advertisement was a sponsorship one, not one for liquor, that it was not aimed at young people and that there was no suggestion, either directly or indirectly, that drinking beer was a cause of success or achievement.

As Ms McIntosh was dissatisfied with TVNZ's response, she referred her complaint to the Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the advertisement complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

The advertisement which was complained about was broadcast by TVNZ in November and December 1991. At that time liquor advertising, as defined in the Code for Advertising Alcoholic Beverages, was prohibited on radio and television. Nevertheless, the complainant alleged that the advertisement broadcast on television breached rules 2 and 6 of that Code. As will be apparent from reading the rules, they are directed at the print media and state:

- 2 Advertisements for alcoholic beverages shall be directed to adult audiences. Liquor advertisement shall not be placed in publications which are intended particularly for minors.
- 6 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.

Although these rules did not apply to the advertisement complained about, TVNZ considered the complaint to assess whether the advertisement breached them. It concluded that they did not. On the grounds that the rules under which the complaint was laid are not applicable to the broadcast, the Authority does not intend to replicate TVNZ's exercise.

The Code for Advertising Alcoholic Beverages, under which the complaint was laid and which prohibited liquor advertisements on radio and television, specifically excluded "Sponsorship Advertising" from its purview. Sponsorship advertising was thus allowed on radio and television although sales messages were prohibited on sponsorship advertisements and such advertisements had to contain a statement of sponsorship by the advertiser. The Lion Red advertisement about which Ms McIntosh complained complied with those requirements and thus was legitimately broadcast.

However, the Authority does not intend to let the matter rest there. It has been reviewing the requirements for advertising alcohol on radio and television for some time and in the recently promulgated rules, which came into effect on 1 February this year, provision was made for the broadcast of liquor advertisements. As would have been expected, strict limits were imposed on various aspects of those advertisements.

Two of the many concerns felt by the Authority in its deliberations about liquor advertising are apparent in the advertisement to which the present complaint relates and

were addressed in the new rules. The first is that some of the sponsorship advertisements amounted to de facto liquor advertisements. Although sponsorship advertisements might not contain explicit sales messages, references to the sponsor's name, when it coincided with the name of an alcoholic product, ensured that the names of alcoholic products were frequently broadcast. That is why the Authority has said that the recent changes, rather than providing for the introduction of liquor advertising, in fact legitimised some of the liquor advertising previously broadcast.

The Authority's second concern was with the content of some of the sponsorship advertisements, particularly as the Code for Advertising Alcoholic Beverages was not applicable. The type of behaviour which was prohibited in liquor advertisements will be apparent in the standards cited above. However, as noted, that Code did not apply to sponsorship advertisements some of which portrayed and emphasised the very aggressive behaviour evident in some sports. As a result of this concern, the new rules for liquor advertisements include the following provision:

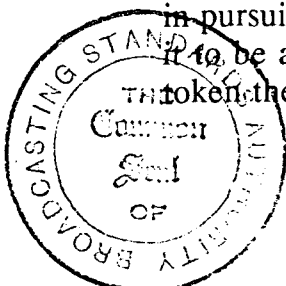
- A Liquor advertisements and sponsorship advertisements by liquor advertisers (individuals or companies which make, market or sell liquor) shall not (i) employ aggressive themes; and (ii) shall not portray either competitive behaviour or exaggerated stereotyped masculine images in an overly dramatic manner. In particular, advertisements which feature sport shall place emphasis on scenes typical of the sport and within the rules of the sport rather than the aggression of the participants. This applies particularly to contact sports.

As rule A came into effect after the broadcast complained about, the Authority is not required to determine whether the advertisement would breach this provision. The Authority's conclusion about this complaint is recorded above - i.e. that the advertisement complained about complied with the then relevant requirements for liquor sponsorship advertising.

As the Code for Advertising Alcoholic Beverages, under which the complaint was laid, did not apply to sponsorship advertisements, the Authority declines to uphold the complaint.

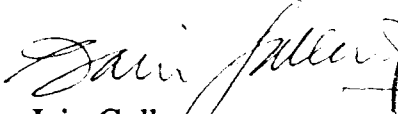
TVNZ expressed its concern to the Authority that some complainants (but not Ms McIntosh) had played a "numbers game" with the complaints process, recording that it had received 37 individual complaints about this advertisement. It was now apparent, TVNZ noted, that many of these complaints had been organised by one interest group. TVNZ wrote to the Authority on this point:

A bona fide challenge to the company concerning standards will always be treated with respect. But the company, when it has to go to extra and unwarranted expense in handling complaints which are aimed primarily at skewing statistics, in pursuit of a cause, views this in quite a different light. We genuinely believe it to be an abuse of the statutory process. We would observe that by the same token the Authority could unwittingly become part of "the numbers game".

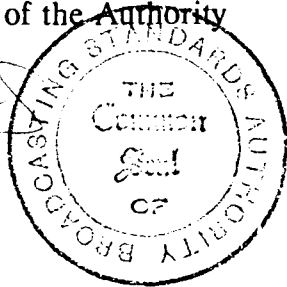


The Authority, noting both that multiple complaints are not prohibited in the Act and that it is not practical to require complainants to merge their complaints, considers that the administration issue raised is one for the broadcaster - and possibly for the Authority - to deal with as part of the normal complaint process.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



4 June 1992

Appendix

Ms Carol McIntosh's Complaint to Television New Zealand Limited

In a letter dated 17 December 1991, Ms McIntosh of the Community Health Services of the Nelson-Marlborough Area Health Board complained to Television New Zealand Ltd about a Lion Red advertisement. She wrote:

The advertisement is aimed at young people and the message read that good times and Lion Red go hand in hand.

Accordingly, she continued, the advertisement breached standards 2 and 6 of the Code for Advertising Alcoholic Beverages.

TVNZ's Response to the Formal Complaint

TVNZ advised Ms McIntosh of its Complaints Committee's decision in a letter dated 14 February 1992. It recorded that there had been a large number of complaints which alleged that the advertisement had breached some standards in the Television Code of Broadcasting Practice, the Code for the Portrayal of People in Advertising, the Code of Advertising Alcoholic Beverages and the Code for Liquor Advertising.

TVNZ pointed out that the advertisement was a sponsorship one, not one for liquor, and recorded:

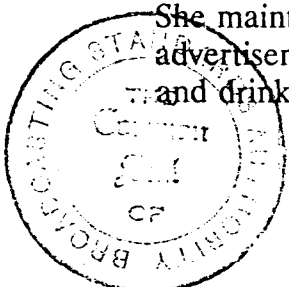
[I]t promoted [the company's] sponsorship of major sports in New Zealand such as rugby league and softball. By intercutting with quick sequences of top level sport from overseas, it associated moments from the sports sponsored by Lion Red Ltd with the world's top sporting performances - hence the "Big Time" sporting theme.

In regard to Ms McIntosh's specific complaints, TVNZ said that it was obvious that the advertisement was not aimed at young people and that it did not imply that Lion Red beer was the cause of success or achievement.

Ms McIntosh's Complaint to the Broadcasting Standards Authority

As she was dissatisfied with TVNZ's response, in a letter dated 25 February 1992 Ms McIntosh referred her complaint to the Authority under s.8(a) of the Broadcasting Act 1989.

She maintained that the advertisement was aimed at young people and that the advertisement's reference to "good times" was associated with both sporting success and drinking Lion Red beer.



The Authority also received a letter in support of Ms McIntosh's complaint from Ms Vivien Daley, a Health Promotion Advisor with the Community Health Department of the Christchurch School of Medicine. She said a number of individuals from the Community Health Department had been responsible for the large number of complaints received by TVNZ about the advertisement. They had written as individuals to ensure that the broadcaster did not dismiss the complaint as only one person's concern. The Authority records that it had earlier declined to accept Ms Daley's referral of her complaint about the advertisement as her referral did not comply with the statutory time limits during which referrals must be made.

TVNZ's Response to the Authority

At its practice, the Authority sought the broadcaster's response to the complaint. The letter to TVNZ is dated 26 February 1992 and its reply, 3 April.

In regard to the complaint that the advertisement was directed at young people, TVNZ pointed out that all the sportsmen shown were adults and that the dialogue was "primarily adult fare". It also argued out that Ms McIntosh had no evidence for her allegation. Regarding the complaint that the advertisement linked beer drinking with social success, TVNZ said that the advertisement gave no hint of beer consumption and, further, it was incorrect to assume that social success was an inevitable sequel of sporting success.

Despite these comments, TVNZ concluded:

However, all the above points are somewhat academic when it is appreciated that the advertisement in question is not a liquor advertisement, as defined under the definitions heading of the Code for Advertising Alcoholic Beverages, but it is in fact a sponsorship advertisement within the meaning of the sponsorship advertising definition. This is clearly signalled at the conclusion where there is the Lion Red Limited logo below which is the wording "Proud sponsors of the NZ Rugby League and Softball".

In these circumstances rules 2 and 6 of the code, which the complainant cited, can have no application.

The Authority also forwarded to TVNZ a copy of Ms Daley's letter in support of Ms McIntosh's complaint. In its reply TVNZ expressed its concern about the procedures adopted by the members of the Community Health Department in Christchurch which, it said, amounted to an abuse of the statutory complaints process.

Ms McIntosh's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 22 April Ms McIntosh referred to TVNZ's dissatisfaction with what it described as an "abuse" of the process. She argued that the use of similar wording in complaints should not be sufficient to justify a broadcaster being allowed to give each complaint less than its full consideration.

