

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 38/92

Dated the 25th day of June 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CLIFF TURNER

of Hamilton

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

Coverage of a World Cup one-day cricket match was broadcast by Television New Zealand Ltd on TV1 on 10 March 1992. Late in the afternoon, commentator Peter Williams introduced Keith Quinn - another TVNZ sports commentator. Mr Quinn then told viewers of a competition involving a company called Beer Essentials which sold T-shirts.

Mr Turner complained to TVNZ that the broadcast breached the requirement in the Television Code of Advertising Standards that advertisements must be clearly distinguishable from other programme material.

TVNZ declined to uphold the complaint as, it said, viewers would recognise that they were watching a commercial promotion. As Mr Turner 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 of the Authority have viewed the item to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

Mr Turner complained to TVNZ that a segment of TV1's cricket coverage on 10 March 1992 breached standard (i) of the TV Advertising Standards which reads:

- (i) Advertisements shall be clearly distinguishable from other programme material.

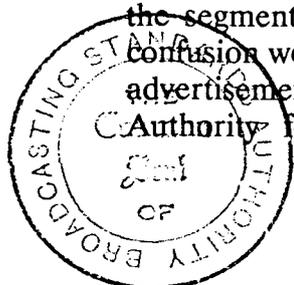
Mr Turner explained that one of TVNZ's cricket commentators, Mr Peter Williams, had said that the programme would cross to Mr Keith Quinn, another TVNZ commentator. Mr Quinn was standing at the side of a cricket ground, apparently the same one from which the broadcast was made, when he told viewers about a competition involving T-shirts and a company called Beer Essentials. Mr Turner complained that the apparent advertisement was not distinguishable from other programme material.

In response, TVNZ declined to uphold the complaint as, it said, the visuals at cricket were either of the cricket, a commercial or a trailer and as Mr Quinn's comments related neither to the cricket nor to a forthcoming programme, it must have been a commercial. In its later advice to the Authority, TVNZ reduced its claim about the limited range of visuals shown at cricket matches and maintained that the contents of the segment complained about were obviously broadcast as a result of a commercial arrangement.

In passing the Authority would ask whether the interminable seagulls screened, in view of their apparent lack of cricketing skills, are used for either promotion or advertising purposes.

The Authority is not aware of TVNZ's previous use of the practice about which Mr Turner complained. Furthermore, by referring to another commentator, TVNZ did not indicate that an advertisement was about to be broadcast. The introduction was presented in such a way that viewers would not have been surprised if Mr Quinn, a well-known rugby commentator, had made some comments about sport or, perhaps, had referred to a competition being run by TVNZ. In the Authority's opinion, it is highly unlikely that viewers would have been expecting Mr Quinn to advertise a competition run by another company. However, when Mr Quinn began his presentation, his observations, and visuals accompanying them, included the price of the product referred to and an 0800 telephone number for competition entries.

In conclusion, the Authority thought that the item could well have been introduced with such words as "Over to Keith Quinn for a commercial break", or the use of the caption "advertisement", in order to minimise any initial confusion. However, as the contents of the segment were so obviously a commercial, the Authority decided that any initial confusion would quickly dissipate. Moreover, the wording of the standard requires that advertisements be clearly "distinguishable" not clearly "distinguished". Although the Authority felt some hesitation about the beginning of the advertisement and,



consequently, understood Mr Turner's concern, in view of the contents of the item it decided that the broadcast did not breach standard (i) of the Advertising Standards.

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

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



25 June 1992

Appendix

Mr Cliff Turner's Complaint to Television New Zealand Ltd

In a letter to Television New Zealand Limited dated 10 March 1992, Mr Turner referred to that day's broadcast of a World Cup cricket match on TV1 in which, late in the afternoon, commentator Peter Williams had introduced Keith Quinn, another TVNZ sports commentator. Mr Quinn told viewers about a competition involving a company called Beer Essentials which sold T-shirts.

Mr Turner complained that, as it was probable that TVNZ had been paid for the promotion, the broadcast breached standard (i) of the Television Code of Advertising Practice which requires that advertisements be clearly distinguishable from other material.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Turner of its Complaints Committee's decision in a letter dated 21 April 1992. The complaint was assessed under the standard requiring that advertisements be clearly distinguishable from other material and TVNZ wrote:

The Committee noted that given the circumstances of a live cricket broadcast, anything other than actual vision of play must either be a commercial or a trailer for a programme. As it was obviously not a trailer the Committee believed that there could not be any distinguishability problem. Therefore the rule would not be in jeopardy. Accordingly your complaint was not upheld.

Mr Turner's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's response, on 3 May 1992 Mr Turner referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. He maintained that the standard had been breached as the advertisement had been presented by a man usually seen as a commentator.

He described TVNZ's argument that visuals at cricket games were either cricket, a commercial or a trailer as ridiculous, recalling that many incidental visuals used in cricket matches showed neither a trailer nor a commercial.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comments on the complaint. The request is dated 7 May and TVNZ's reply, 26 May.

TVNZ pointed out that there was a commercial arrangement between TVNZ

Enterprises and the Beer Essential company - a company which did not trade in liquor. It continued:

We would submit that the very content of the advertisement brands it clearly as a commercial regardless of the fact that it is a sports commentator who presents it. He is obviously not talking about the game.

Referring to a decision of the Broadcasting Tribunal (the Authority's predecessor) cited by Mr Turner, TVNZ said the situations were dissimilar as the earlier decision involved references to a brewery during a commentary. In the present case, apart from involving another commentator, the references to the products and the price clearly showed that the item was an advertisement.

Disputing that shots in cricket matches which were obvious cut-aways could possibly be a trailer or commercial, TVNZ submitted the Authority should dismiss the complaint as frivolous.

Mr Turner's Final Comment to the Authority

When asked for his comment on TVNZ's response, in a letter dated 29 May 1992 Mr Turner argued that advertisements should be screened in clearly designated commercial breaks. He found it deplorable that a well-known TV commentator should be describing rugby at one moment and fronting for a commercial organisation

