

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 45/92

Dated the 23rd day of July 1992

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

A Dominion Breweries Young Guns advertisement sponsoring the New Zealand Cricket Team was broadcast by Television New Zealand Ltd on TV1 at 5.20pm on 10 March.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, pointed out to TVNZ Ltd that the words "DB Draught" were spoken and appeared visually. As DB Draught was the name of a brand of liquor, he complained that the advertisement, first, breached the Code for Advertising Alcoholic Beverages as it linked the name of a liquor to cricketing heroes of the young, and, secondly, breached the prohibition in the schedule of the Liquor Advertising Rules for liquor advertisements between the hours of 6.00am - 9.00pm.

On the basis that the advertisement was a sponsorship advertisement and not a liquor one, and as the name of a product was allowed in a sponsorship advertisement, TVNZ declined to uphold the complaint. As it was dissatisfied with that decision, Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

When asked for a copy of the specific advertisement to which the complaint related, TVNZ advised the Authority, incorrectly, that it had already supplied a copy of the tape. It is a minor issue with this complaint as, although the Authority has not seen the particular advertisement which was broadcast at 5.20pm on 10 March, it has seen a number of Young Guns advertisements and is thus well aware of the issue which was raised in the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

Mr Turner, on GOAL's behalf, complained to TVNZ that the Dominion Breweries Young Guns advertisement sponsoring the New Zealand Cricket Team broadcast at 5.20pm on 10 March breached two of the standards in the rules applying to liquor advertising on television. In response, TVNZ argued that the advertisement was a sponsorship one to which the standards cited did not apply.

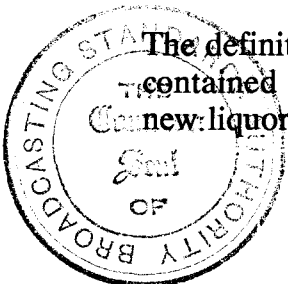
When referring the complaint to the Authority, Mr Turner pointed to an earlier decision of the Authority (No: 17/90) in which the Authority had emphasised the importance of including the word "Limited" when using a company's name in sponsorship advertisements. That word had not appeared in the advertisement to which the complaint related. TVNZ maintained that Decision No: 17/90 had, in effect, been cancelled with the Authority's introduction of brand advertising in February 1992.

The Authority considered it appropriate to cite the words in Decision No: 17/90 to which GOAL referred. It said at the time:

The Authority is currently studying the present rules regarding the "promotion of alcohol" on both radio and television and assessing whether they are indeed satisfactory. The Authority accordingly advises that unless it becomes obvious in the immediate future that the parties responsible are prepared to accept and ensure first, that the word "Limited" or its abbreviation is added to all brand names which are incorporated in or identical with the name of the advertising company and secondly, that the words "sponsor", "sponsorship" or "sponsored by" are used exclusively when indicating sponsorship, it will insist that the rules are amended to eliminate any opportunity to take advantage of the latitude they currently offer.

As will be apparent, when that Decision was issued the Authority was considering the immediate future for sponsorship advertisements while it completed its study about alcohol promotion in general on radio and television. The new rules, which came into effect on 1 February this year, provided for brand advertising under strict conditions. One of the requirements confines the broadcast of such advertisements to between the hours of 9.00pm and 6.00am and that is one of the standards GOAL cited in its complaint.

The definition of a "sponsorship advertisement", as opposed to a "liquor advertisement", contained in the Code for Advertising Alcoholic Beverages was not changed when the new liquor promotion rules came into effect in February this year. It reads:



"Sponsorship Advertising" means any advertisement which contains a statement of sponsorship by or on behalf of an advertiser (product, brand or outlet) of a sports or other event (eg "Sponsored by ... ", " ... proud sponsors of ... ") provided always that such an advertisement does not contain any sales message pertaining to liquor and does not depict liquor products, liquor packaging or the consumption of liquor. References to a sponsor may contain the sponsor's name and/or logo provided that such name and/or logo contains no other reference to liquor or a sales message.

As the definition was not changed and, although it was not the standard examined in Decision No: 17/90, GOAL's complaint is understandable, especially as sponsorship advertisements are not confined to the hours for liquor advertisements.

One of the Authority's principal concerns at the time it issued Decision No:17/90 was the increasing use by liquor companies of sponsorship advertising as a subterfuge for brand advertising. Now that brand advertising has been approved (subject to stringent conditions), earlier attempts by advertisers to try to present liquor advertisements under the rubric of sponsorship advertisements have not been an issue.

Anticipating that liquor advertisements would no longer be broadcast under the guise of sponsorship advertisements, the new requirement applicable to sponsorship advertisements in standard 27(a) reads:

However, the brand names of alcoholic beverages and company names may be used in sponsorship advertisements, credits or trailers.

In regard to this complaint, the Authority examined the advertisement to see whether, contrary to the definition of sponsorship advertisement in the Code for Advertising Alcoholic Beverages, it contained a liquor sales message or depicted liquor products, packaging or consumption, and whether, as permitted, it referred to the sponsor's name and/or logo. The Authority noted that it is now acceptable to use brand names in sponsorship advertising (especially as brand advertising is permitted) and that the advertisement clearly identified that DB Draught was a sponsor. Acknowledging, in addition, that the references to the brand name and the depiction of the logo were brief, the Authority concluded that the advertisement was a sponsorship one and that it complied with the requirements for such advertisements in the Code for Advertising of Alcoholic Beverages.

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

Signed for and on behalf of

Iain Gallaway
Iain Gallaway
Chairperson



23 July 1992

Appendix

GOAL's Complaint to Television New Zealand Ltd

In a letter dated 10 March 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, wrote to Television New Zealand Ltd about a Dominion Breweries Young Guns advertisement which was broadcast on TV1 at about 5.20pm that day.

He said that the words "DB Draught" were spoken and appeared visually in the advertisement. As DB Draught was a brand of liquor, he complained that the advertisement, first, breached standard 4 of the Code for Advertising Alcoholic Beverages as it linked a brand name with cricket heroes of the young, and, secondly, breached rule C of the Schedule of the Television Liquor Advertising Rules which prohibits liquor advertisements between 6.00am and 9.00pm.

TVNZ's Response to the Formal Complaint

In a letter dated 21 April 1992, TVNZ advised Mr Turner of GOAL of its Complaints Committee's decision. Pointing out that the definition of a sponsorship advertisement permitted the name of a product and maintaining that the definition did not require the full company name, TVNZ argued that the advertisement was a sponsorship one and not a liquor one. Accordingly, the provisions cited by GOAL were not relevant as they applied only to liquor advertisements. The complaint was not upheld.

GOAL's Complaint to the Broadcasting Standards Authority

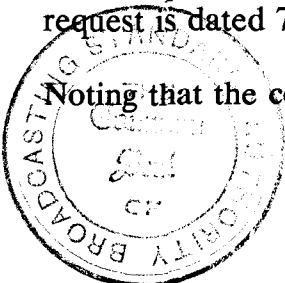
As it was dissatisfied with TVNZ's decision, in a letter dated 4 May 1992 Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Referring to Decision No: 17/90 in which the Authority ruled that a sponsorship advertisement must use the word "Limited", GOAL argued that, as the word was not used in the advertisement complained about, it was a liquor advertisement. As a liquor advertisement, it continued, it had breached the rules referred to in its complaint to TVNZ.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. The request is dated 7 May 1992 and TVNZ's reply 26 May.

Noting that the complaint hinged on the definition of a sponsorship advertisement,



TVNZ pointed out that Decision No: 17/90 was based on the Liquor Advertising Rules for Radio - a code which had since been rescinded. Referring specifically to the details of that Decision, TVNZ argued that the new liquor codes which came into effect on 1 February 1992 had "cancelled out or overtaken" the previous provisions.

In addition, TVNZ cited the wording of standard 27(a) of the Television Code of Broadcasting Practice which came into effect on 1 February and which provided:

However, the brand names of alcoholic beverages and company names may be used in sponsorship advertisements, credits or trailers.

Referring in addition to the Code for Advertising Alcoholic Beverages, TVNZ argued that the key words were "brand" and "logo" and that the rules did not require the use of the word "Limited" as GOAL insisted.

TVNZ stated that the broadcasters were attempting to comply fully with the new rules. That the advertisement complained about was a sponsorship one was made clear by the reference to "sponsors" both visually and audibly. TVNZ concluded:

Finally the company would comment that the complainant appears to be seeking to invoke prohibitions applicable under rescinded rules for the purpose of prosecuting this complaint with the Authority. We would accordingly submit that this complaint has no validity.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 29 May Mr Turner, on GOAL's behalf, did not wish to comment further.

