

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 59/92

Dated the 14th day of September 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

AUCKLAND WOMEN'S HEALTH
COUNCIL INC.

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

A "Steinlager" beer advertisement set in New York city was screened by Television New Zealand Ltd on a number of occasions in February 1992. It featured a cab driver who took his fare into a bar which served "Steinlager" beer and which, the driver said, was "crawling with women".

The Co-ordinator of the Auckland Women's Health Council, Ms Judi Strid, complained to TVNZ that the advertisement was in poor taste and the driving featured portrayed typical macho hooligan behaviour. Accordingly, she continued, it breached both the letter and the spirit of the rules for liquor advertising.

Maintaining that the advertisement showed an eccentric taxi driver who was a friendly nuisance rather than being macho, provocative or suggestive, TVNZ declined to uphold the complaint. As the Women's Health Council was dissatisfied with that decision Ms Strid, on its behalf, 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 advertisement complained about and have read the correspondence (summarised in the Appendix). The Authority may set its own procedure under s.10 of the Broadcasting Act and, although the complainant asked for a formal hearing, as the issues were comprehensively dealt with in the correspondence, the Authority decided to follow its usual practice and has determined the complaint without a formal hearing.

The Co-ordinator of the Auckland Women's Health Council (Ms Judi Strid) wrote to TVNZ about an advertisement for "Steinlager" beer set in New York and which featured a cab driver. The Council believed the advertisement was in poor taste and included, on the part of the cab driver, macho behaviour and sexist comments. The Council also argued that the advertisement clearly implied drinking and driving by the cab driver.

TVNZ initially assessed the complaint against rule A of the Schedule to the Liquor Advertising Rules for Radio and Television and standard 6 of the Code for Advertising Alcoholic Beverages. At the Authority's request, in view of the complainant's concern about drinking and driving, TVNZ later considered the complaint under standard 7 of the Code for Advertising Alcoholic Beverages. The rule and the standards read:

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.

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.

Liquor advertisements shall not suggest a relationship between liquor and sex by placing immoderate or immodest emphasis on romantic situations or by using illustrations or poses which are provocative or suggestive.

7. There shall be no direct association between the consumption of liquor and the operation of a motor vehicle, boat or aeroplane, or engagement in swimming, water sports or other potentially hazardous activities. Any consumption shall clearly be after the relevant activity and involve only safe practice.



In the case of liquor advertisements for low alcohol beverages, an association with the above-listed activities may be made for the purposes of promoting low alcohol beverages.

Arguing that the advertisement portrayed a gregarious, enthusiastic and uninhibited, if unrefined, person looking for a good night out, TVNZ declined to uphold the complaint. It added the advertisement, as allowed by standard 6, depicted a happy social environment which did not place immoderate emphasis on romantic situations nor use provocative or suggestive poses. Standard 7, TVNZ noted, prohibited the "direct association" between the consumption of alcohol and the operation of a motor vehicle and a direct association was not portrayed in the advertisement. Only at the end of the journey after the driving sequence was finished, TVNZ continued, did the garrulous driver have a drink. Moreover, TVNZ observed:

In response to the implied question about drinking and driving he responds with a shrug and says "so we'll take a cab" - which, in the view of the [Complaints] Committee, could be seen as reinforcing the message that drinking and driving don't mix.

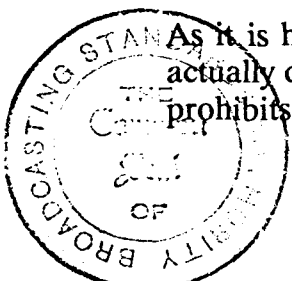
The Authority is familiar with the advertisement complained about as it has declined to uphold two other complaints both of which alleged that it breached standard 4 of the Advertising Code of Ethics (Decisions Nos: 31/92 and 44/92). In both of those complaints the complainants argued that the cab driver's comment that the bar was "crawling with women" breached the requirement in standard 4 which prohibits statements which cause undue offence to sections of the community.

In those decisions, the Authority decided that the driver's comment complained about, rather than casting aspersions on the women in the bar, showed the driver was trying to boost his own importance and, furthermore, the women were unimpressed by the driver's inept overtures.

The three standards under which TVNZ assessed the Auckland Women's Health Council complaint raised some different issues. Nevertheless, the Authority applied the same reasoning outlined above to the current complaint about the driver's macho behaviour and sexist comment and decided that the advertisement did not breach rule A or standard 6. The advertisement did not portray an exaggerated stereotyped masculine image in an overly dramatic manner in contravention to rule A, nor did it suggest a relationship between liquor and sex by immoderate emphasis on romantic situations or by using provocative or suggestive poses.

The complaint under standard 7 which alleged a depiction of drinking and driving, however, required a careful consideration of that standard's wording. The standard expressly prohibits a "direct association" between the consumption of liquor and the operation of a motor vehicle.

As it is highly unlikely that a liquor advertisement would portray a driver of a vehicle actually drinking alcohol, the Authority decided that the phrase "direct association" also prohibits an advertisement which, because of its visual or audio content, contains a



reasonable implication that drinking and driving occurs.

In the advertisement complained about, the cab driver responded to the unspoken question about drinking and driving with the words: "so, we'll take a cab". The Authority noted that that comment was a direct reference to drinking and driving and thus brought the issue to the viewer's attention. However, it was not clear from the words spoken whether the cab driver, after drinking, would drive his own cab or would ride as a passenger in another cab. The complainant argued for the former interpretation while TVNZ maintained that the latter was correct and that the advertisement, indeed, reinforced the message that people who drink should not drive.

The Authority decided that the message to be drawn from the advertisement, about whether the cab driver was or was not adopting a responsible response, was ambiguous. It believed that the ambiguity would have been removed if the driver's comment had been "we'll call a cab" or "we'll take another cab". However, by just using the words, "we'll take a cab", the implication could be justifiably drawn that he would drive his own cab after completing drinking. The Authority also took account of the high level of public concern about drinking and driving and concluded that, if an advertisement was ambiguous but contained a reasonable implication that drinking and driving would occur, then it was in breach of standard 7.

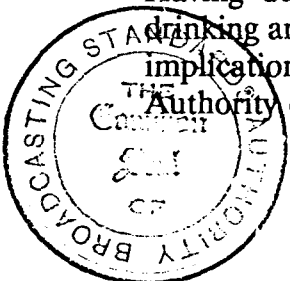
Furthermore, in complaints about alcohol advertisements which involve ambiguity about a participant's intention, the Authority examines the relevant standard carefully, Standard 7 concludes with the sentence:

Any consumption shall clearly be after the relevant activity and involve only safe practice.

As it was not clear in the advertisement complained about whether the cab driver had finished driving his cab for the evening, the Authority believed that its interpretation of the advertisement's ambiguity was further supported. Decisions involving ambiguity inevitably involve weighing the evidence and, in this case, the Authority concluded that the evidence available added justification to its finding that the advertisement entailed a direct association between the consumption of alcohol and the operation of a motor vehicle.

The Authority would also acknowledge that this conclusion involves giving the phrase "direct association" a liberal interpretation rather than a narrow literal one but it believes that such a response is appropriate in view of the degree of public disapproval of drinking and driving. Moreover, the Authority made the point above that a liquor advertisement is very unlikely to portray drinking and driving directly and, consequently, its liberal interpretation is appropriate in order to give the standard some realistic meaning.

Having decided that the advertisement, after drawing attention to the question of drinking and driving, dealt with the issue ambiguously and that it contained a reasonable implication that the cab driver featured would drive his own cab after drinking, the Authority concluded that it breached the standard which prohibits a direct association



between drinking and the operation of a motor vehicle.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of the Steinlager advertisement set in New York city and featuring a cab driver breached standard 7 of the Code for Advertising Alcoholic Beverages.

The Authority declines to uphold the complaint that the same advertisement breached standard 6 of the same Code or rule A of the Schedule to the Liquor Advertising Rules for Radio and Television.

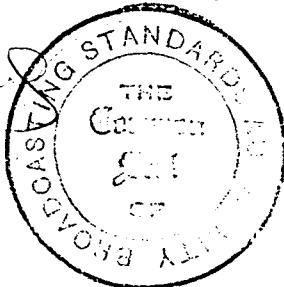
Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act. It does not intend to do so on this occasion as this is the first complaint it has upheld under standard 7 since the new Codes which allow liquor brand advertising came into operation in February this year. The Authority believes that it would be inappropriate to impose orders on broadcasters until each standard has been assessed and interpreted by the Authority, except when a standard is blatantly breached.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson

14 September 1992



AppendixAuckland Women's Health Council Inc's Complaint to Television New Zealand Ltd

In a letter dated 24 February 1992 the Co-ordinator of the Auckland Women's Health Council, Ms Judi Strid, complained to Television New Zealand Ltd about an advertisement for "Steinlager" beer, set in New York city, broadcast on a number of occasions earlier that month.

Referring to a letter in the local newspaper from the Minister of Broadcasting explaining the purpose of the changes to the rules for advertising liquor on radio and television, Ms Strid said that the advertisement was in poor taste and portrayed crazy driving which it described as:

typical macho, hooligan behaviour

Ms Strid also complained about the taxi driver's comment that the bar was "crawling with women" and about the fact that, after apparently drinking beer, he responded to the unspoken question about drinking and driving with a shrug and the comment:

so we'll take a cab.

Ms Strid said that the comment obviously meant his own cab.

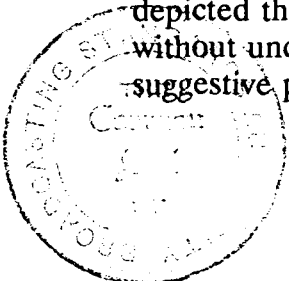
She concluded by stating that the advertisement met neither the letter nor the spirit of the standards.

TVNZ's Response to the Formal Complaint

TVNZ advised the Women's Health Council of its Complaints Committee's decision in a letter of 23 April 1992. The complaint, it wrote, had been considered under rule A of the Schedule to the Liquor Advertising Rules and standard 6 of the Code for Advertising Alcoholic Beverages as they related closely to the standards referred to in the newspaper letter quoted.

TVNZ described the taxi driver's behaviour as not atypical for New York and said that his general demeanour displayed joie de vivre. It argued that the advertisement included the safety message of taking a cab after drinking.

Referring specifically to rule A of the Schedule of the Liquor Advertising Rules, TVNZ stated that the driver was portrayed as a friendly nuisance rather than being aggressive or macho in an overly dramatic way. As for standard 6, the advertisement depicted the consumption of liquor as part of a happy social environment, as allowed, without unduly emphasising romantic situations or the use of provocative or suggestive poses. The complaint was not upheld.



Auckland Women's Health Council's Complaint to the Broadcasting Standards Authority

As the Council was dissatisfied with TVNZ's response, in a letter dated 27 April Ms Strid on the Council's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

TVNZ, she wrote, had not taken the complaint seriously and she disputed the broadcaster's reason for accepting the driver's behaviour because people of such "extraction", to use TVNZ's term, behaved in that way. In addition, she argued, that the advertisement, rather than highlighting the dangers of drinking and driving, gave the opposite impression.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the referral. The letter is dated 12 May and TVNZ's reply, 16 June.

TVNZ disputed the complainant's allegation that it had not taken the complaint seriously. Pointing out that it had been necessary to distil out the precise aspects of the complaint, it maintained that it had responded in a thorough and serious way.

With regard to some of the complainant's specific comments, TVNZ stated that the comment about the driver's "extraction" tied in with some of its other comments about the driver's "general demeanour". The approach to driving and the skills displayed, TVNZ remarked, would be familiar to anyone who had travelled by taxi in New York city.

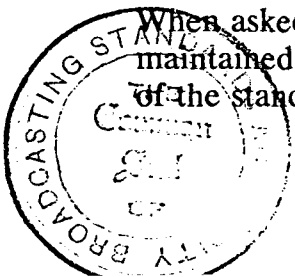
Concerning the drink/drive message, TVNZ argued that it was a non-issue in respect to the standards against which the complaint had been assessed. In response to the complainant's view of some of the driver's antics portrayed, it commented that drinking and driving was not an issue of social graces and stated:

Furthermore, we would submit that it is by no means a self-evident truth that the taxi driver is about to drink other than in moderation, and then drive the cab.

TVNZ concluded by pointing out that the driver's eccentric and ebullient characteristics did not amount to either an aggressive theme or exaggerated stereotyped masculine images.

Auckland Women's Health Council's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 1 July Ms Strid maintained the Council's main complaint that the advertisement breached the intent of the standards and that it was not satisfied with TVNZ's explanation.



Further Correspondence

Having examined the correspondence, on 14 July 1992 the Authority decided that the Auckland Women's Health Council's letter to TVNZ of 24 February also complained that the advertisement breached standard 7 of the Code for Advertising Alcoholic Beverages. Standard 7 states that liquor advertisements shall not contain a direct association between the consumption of liquor and the operation of a motor vehicle. Accordingly, the Authority asked TVNZ to put that aspect of the complaint specifically before its Complaints Committee.

In a letter dated 6 August, TVNZ reported that its Complaints Committee did not uphold that aspect of the complaint as the advertisement did not portray, as prohibited by the standard, the direct association between drinking and driving. Only at the end of the advertisement, it said, did the garrulous cab driver appear to take a drink and, in response to the implied question about drinking and driving, he shrugged and said "so, we'll take a cab". That comment, TVNZ added, could be seen as reinforcing the message that drinking and driving did not mix.

When asked to comment on TVNZ's decision about standard 7, Ms Strid on the Council's behalf described the consultative process as "mad", "longwinded" and apparently designed "to wear people down". The Council stood by its original complaint and considered TVNZ's explanation to be unacceptable.

