

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 67/92

Dated the 28th day of September 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

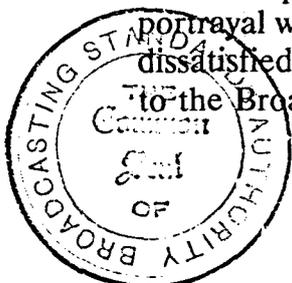
DECISION

Introduction

Martin Crowe, the captain of the New Zealand cricket team, and his wife Simone were interviewed by Martin's brother Jeff Crowe, a former captain of the team, on a programme called "Crowe on Crowe" broadcast by Television New Zealand Ltd on TV1 on 23 March. The broadcast included some illustrative material from cricket broadcasts, news programmes and family activities, some of which dated from the brothers' childhood.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to TVNZ that, as Martin Crowe was wearing a shirt which carried a Dominion Breweries logo, the broadcast breached standard 27 of the Television Code of Broadcasting Practice which requires that the promotion of liquor which is incidental to a programme be minimised and, where practical, not shown at all.

TVNZ said that Martin Crowe's clothing was the "official" uniform of the New Zealand World Cup cricket team and, although the DB logo could not be totally avoided, its portrayal was minimised during editing. The complaint was not upheld. As GOAL was dissatisfied with TVNZ's response, Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

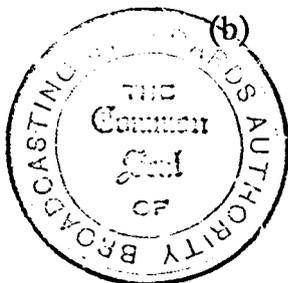
The members of the Authority have viewed the programme to which the complaint relates and have read the correspondence (summarised in the Appendix). As it believed that the issue of incidental liquor advertising required thorough investigation, Mr Turner on GOAL's behalf asked the Authority to hold a formal hearing. The Authority shares GOAL's concerns about broadcasters' approaches to incidental advertising but, initially, it wanted an opportunity to assess the impact of standard 27 which came into operation only in February this year.

Further, as the decision discloses, the Authority's principal task when assessing this complaint was the interpretation of standard 27(d). The facts and the broadcaster's and GOAL's concerns about incidental advertising were not in dispute and, accordingly, the Authority believed that there was little to gain by holding a hearing at this stage. Under s.10 of the Broadcasting Act the Authority may set its own procedure and, as it has sufficient material to determine the present complaint, it has decided to follow the usual practice and to determine the matter without a formal hearing.

The complaint related to a programme which consisted mainly of brothers Jeff and Martin Crowe discussing their cricketing experiences and their approaches to the game and to life in general. Martin Crowe was the captain of the New Zealand cricket team which had just competed in the World Cup one-day cricket competition and Jeff was a former captain of the New Zealand team. The discussion took place while both men were sitting in what the Authority was later told was the team's hotel dining room and they were seen to be sipping wine. Although most of the shots of Martin Crowe focused on his face and shoulders, some wider shots in the second and fifth segments of the programme included his upper body and disclosed a brewery (DB) logo on the pocket of his shirt. These wider shots seemed to be largely for the purpose of including hand gesticulations. Jeff Crowe's shirt did not carry a similar logo and the shots of him frequently included his upper body as well as his head and shoulders.

On GOAL's behalf, its secretary (Mr Cliff Turner) complained to TVNZ that, as Martin Crowe was shown wearing a shirt carrying the DB logo, it breached standard 27 of the Television Code of Broadcasting Practice relating to the incidental promotion of liquor. It reads (omitting a footnote which is not relevant to this complaint):

- 27 Broadcasters will ensure that the promotion of liquor which is incidental to a programme is minimised and in particular:
- (a) Will not be a party to any contract or arrangement where incidental liquor promotion is a contrived part of the programme. However, the brand names of alcoholic beverages and company names may be used in sponsorship advertisements, credits or trailers.
 - (b) Will not focus during any programme on any particular advertising signage, logo or any other sound or visual effect which promotes liquor.



- (c) Will ensure in any live, on-location interview of a person or persons that the use of apparel or background signage which bears liquor promotion messages or logos of liquor advertisers (individuals or companies, which make, market or sell liquor) is minimised.
- (d) Will ensure in any pre-arranged non-advertising programme, such as an interview in a studio or at an event, panel or quiz show, that the use of apparel or background signage promoting liquor is minimised and, where practical, not shown or referred to at all.

It is recognised that incidental promotion occurs regularly in programmes where broadcasters have little or no control over the situation. Where broadcasters have control of the situation, e.g. recorded or delayed broadcasts, they will ensure that this standard is followed in the spirit as well as the letter.

In response to the complaint, TVNZ said that Martin Crowe's shirt was part of the team's "official" uniform and that the logo was visible for less than three minutes in a 45 minute programme. TVNZ discussed and dismissed as inapplicable the complaint under standards 27(b) and (c). Standard 27(a), it said, was also irrelevant as the programme did not include contrivances. With regard to standard 27(d), TVNZ said that the standard required that the portrayal of apparel promoting liquor be minimised and that had occurred. In declining to uphold the complaint, TVNZ wrote:

The presence of the DB logo could not be avoided but was minimised by the manner in which the programme was shot and edited.

When referring the complaint to the Authority, Mr Turner on GOAL's behalf raised five points. Also recorded are TVNZ's response and the Authority's comment.

- a) GOAL noted that the cricket competition was sponsored by a tobacco company and asked why a brewery (DB) had supplied the uniforms for the New Zealand team. TVNZ pointed out that DB was the sponsor of the New Zealand cricket team and enclosed a letter to that effect from New Zealand Cricket Inc. The letter recorded that the team members were obliged to wear the official dress during practice as well as matches. The letter also recorded that New Zealand Cricket, not the sponsor, would expect Martin Crowe as captain to wear team clothing during media exposure.

The Authority noted the above.

- b) GOAL complained that the clothing, by bearing the logo, was "clearly contrived" while TVNZ regarded that definition of "contrived", which dealt with the way the shirt was made, as contrived.

The Authority did not accept GOAL's complaint that the addition of the logo made the clothing contrived.



- c) When GOAL suggested that sponsorship contracts overrode broadcasting standards, TVNZ described that attitude as naive. The Authority, while agreeing with TVNZ that sponsorship contracts are subservient to the statutory broadcasting standards, nevertheless sympathises with GOAL as it is possible to gain the impression from some of TVNZ's comments about the importance of the contractual arrangements to the conditions under which it was allowed to make the programme, that sponsorship contracts were elevated above all other matters.
- d) As the programme was pre-arranged, GOAL said, the incidental promotion breached the standard's spirit as well as its letter. TVNZ said that the standard's spirit had been professionally observed throughout the programme.

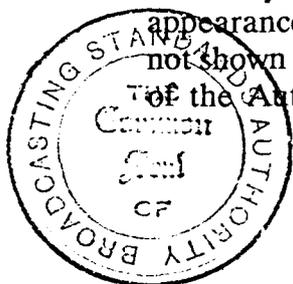
The Authority discusses this issue below.

- e) GOAL disputed TVNZ's claim that the standard had been complied with by minimising the incidental promotion of liquor. It argued that if TVNZ had insisted that Martin Crowe wear a plain shirt, or refused to film while he was wearing a shirt with a logo, it would have complied with the standard which requires that, where practical, there should be no incidental liquor promotion at all. TVNZ stated that the standard did not impose a total ban on incidental promotion and, in the circumstances, the programme's producer had exercised professional judgment to minimise such advertising.

The Authority considers this disagreement to be at the core of the dispute between GOAL and TVNZ and addresses the point fully below.

- f) When TVNZ said that the total programme should be considered when assessing compliance with standard 27, GOAL argued that TVNZ's comments about the "civilised" nature of the programme were irrelevant verbiage. A majority of the Authority concurred with TVNZ on this point and decided that the entire programme should be studied to assess whether it complied with the standard requiring that liquor promotion be minimised. The minority agreed with GOAL and said that an examination of the entire programme was not relevant in deciding whether there had been any incidental liquor promotion.

In the Authority's opinion, as the complaint focused on the broadcast of a DB logo carried on the clothing of a participant in a pre-arranged interview, the interpretation of standard 27(d) was the contentious matter. In addition, the Authority noted the requirement in the next paragraph of the standard that broadcasters must follow it in spirit as well as to the letter. To focus on the wording specifically in dispute, the Authority was required to decide whether, in the programme "Crowe on Crowe", the appearance of the incidental advertising of liquor was "minimised and, where practical, not shown or referred to at all". The reference to the standard's spirit allowed a majority of the Authority to have some sympathy for the practicalities involved in the item's



production, to which TVNZ alluded.

On the other hand, a minority of the Authority believed that a reference to the standard's spirit would resolve any possible diverging interpretation. In this case, it argued, taking into account the section in the standard which referred to it, the standard's spirit was exceedingly obvious - incidental liquor promotion in recorded programmes is acceptable only where, for practical reasons, it cannot be eliminated.

Because of its importance in the determination of this complaint, standard 27(d), is repeated. The introduction to the standard, paragraph (d) and the concluding section state:

27 Broadcasters will ensure that the promotion of liquor which is incidental to a programme is minimised and in particular:

- (d) Will ensure in any pre-arranged non-advertising programme, such as an interview in a studio or at an event, panel or quiz show, that the use of apparel or background signage promoting liquor is minimised and, where practical, not shown or referred to at all.

It is recognised that incidental promotion occurs regularly in programmes where broadcasters have little or no control over the situation. Where broadcasters have control of the situation, e.g. recorded or delayed broadcasts, they will ensure that the standard is followed in the spirit as well as the letter.

Applying standard 27 to the present complaint, it was not disputed that the programme "Crowe on Crowe" involved a pre-arranged interview and that the shirt worn by Martin Crowe carried a DB logo which promoted liquor.

The Authority first asked whether the shots of the logo on the shirt were minimised. Declining to answer purely on the basis of time, although acknowledging that TVNZ said the logo was displayed for less than three minutes in a 45 minute programme, the Authority looked at the shots of Martin Crowe and the shots when the logo was and was not displayed. It also compared the shots of Martin Crowe with those of brother Jeff who was wearing a shirt not bearing the logo.

After watching the numerous close-ups of Martin Crowe and noting that his hands, not his shirt, featured in the shots when the logo was visible and, moreover, that the logo was small and that it was not often seen directly, the Authority concurred with TVNZ. It concluded that the programme had been made in such a way as to comply with the requirement in the opening words of standard 27 that the incidental promotion of liquor be minimised. The Authority acknowledges the way in which TVNZ appears to have attempted to comply with the standard by cropping close-ups to exclude the logo on Martin Crowe's shirt and, when exterior shots were included, his hat.

A majority of the Authority considered the practical exigencies involved in making the programme during the World Cup competition and accepted TVNZ's view that the



broadcast of incidental liquor advertising was minimised and that it had not been practical to eliminate liquor promotion totally.

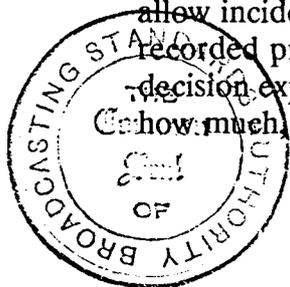
A minority of the Authority, although accepting TVNZ's submissions that the programme might have been acceptable according to a general principle of minimisation, nevertheless in addition considered whether those actions were sufficient to comply with standard 27(d). That sub-standard, which elaborates on the general principle set out in the standard's first sentence, requires not only minimisation but, "where practical", no liquor promotion at all. The minority did not accept that it was impractical to require Martin Crowe to change his shirt or, if he declined, either to defer the interview to a time when he was wearing different clothing or to abstain from making the programme.

According to TVNZ, the sponsorship arrangement raised practical impediments as the letter from New Zealand Cricket Inc. explained that the formal and informal clothing supplied was to be worn during practice and at training and during matches and (for the captain) during media interviews. In assessing that argument, the minority referred back to standard 27 and observed that the note to the standard accepts that incidental promotion occurs regularly when broadcasters have no control over the situation. However, the minority believed, as the programme was not filmed during a match or a practice and training session, any contractual arrangement was not relevant. The Authority makes it abundantly clear that any contracts which may be entered into between sponsors and those sponsored and employers and employees have no relevance to the Codes of Broadcasting Practice which clearly take precedence. In "Crowe on Crowe", the minority contended, the broadcaster had control over the arrangements and the recorded interview was conducted informally in a leading hotel dining room far removed from the practice or playing fields. In fact, one might well have expected players to change into "civilian" clothes in those surroundings. It was entirely practical in those circumstances, as both the letter and spirit of the standard required, that there be no incidental promotion of liquor. The minority decided that the complaint should be upheld.

As the complainant alleged a breach of standard 27 in full, not just paragraph (d) of that standard, the Authority also decided that the broadcast did not involve contrived clothing in contravention of paragraph (a), that it did not breach paragraph (b) as it did not "focus" on the incidental liquor advertising and that paragraph (c) was not relevant as the programme was not a "live, on-location" interview.

For the reasons set forth above, a majority of the Authority declines to uphold the complaint that the broadcast by Television New Zealand Ltd of the programme "Crowe on Crowe" on 23 March 1992 breached standard 27(d) of the Television Code of Broadcasting Practice and the Authority unanimously declines to uphold the complaint under standard 27(a), (b) and (c) of the same Code.

At the time the Authority approved standard 27, it intended that the requirement would allow incidental liquor promotion only in exceptional circumstances in pre-arranged or recorded programmes. Now that it has assessed a complaint under standard 27, as the decision explains the Authority considers that the standard is ambiguous as to when, and how much, incidental advertising may be shown. The Authority is reviewing the liquor



advertising rules at present and announces that it plans to revise standard 27 to remove any ambiguity and to clarify it to ensure that it is not open to various interpretations.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



28 September 1992

Appendix

GOAL's Complaint to Television New Zealand Ltd

In a letter dated 30 March 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about the programme "Crowe on Crowe" broadcast on TV1 on 23 March.

During part of the programme Mr Martin Crowe was shown wearing a shirt which carried the Dominion Breweries logo. That, GOAL continued, was the incidental promotion of liquor and thus the broadcast breached standard 27(a), (b), (c) and (d) of the Television Code of Broadcasting Practice.

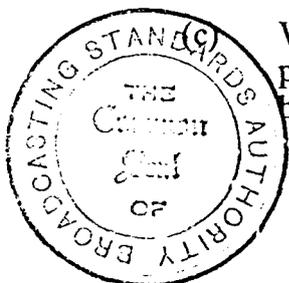
TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 13 May 1992. It reported that the 44 minute programme consisted of a conversation between Jeff Crowe, a former captain of the New Zealand cricket team, and his brother Martin, the current captain, and Martin's wife Simone. It included illustrative extracts from cricket broadcasts, news programmes and family activities.

TVNZ acknowledged that Martin Crowe, during part of the programme, had worn a white T-shirt bearing the DB logo and, during another part, had worn a track suit also with the logo. That clothing, it continued, was Martin Crowe's official uniform and professional dress as captain of the New Zealand World Cup cricket team.

Standard 27 of the Television Code of Broadcasting Practice requires broadcasters to minimise the incidental promotion of liquor and reads (omitting the final paragraph which is not relevant to this complaint):

- 27 Broadcasters will ensure that the promotion of liquor which is incidental to a programme is minimised and in particular:
- (a) Will not be a party to any contract or arrangement where incidental liquor promotion is a contrived part of the programme. However, the brand names of alcoholic beverages and company names may be used in sponsorship advertisements, credits or trailers.
 - (b) Will not focus during any programme on any particular advertising signage, logo or any other sound or visual effect which promotes liquor.



Will ensure in any live, on-location interview of a person or persons that the use of apparel or background signage which bears liquor promotion messages or logos of liquor advertisers

(individuals or companies which make, market or sell liquor) is minimised.

- (d) Will ensure in any pre-arranged non-advertising programme, such as an interview in a studio or at an event, panel or quiz show, that the use of apparel or background signage promoting liquor is minimised and, where practical, not shown or referred to at all.

It is recognised that incidental promotion occurs regularly in programmes where broadcasters have little or no control over the situation. Where broadcasters have control of the situation, e.g. recorded or delayed broadcasts, they will ensure that this standard is followed in the spirit as well as the letter.

In regard to the aspect of standard 27(d) referring to minimising the promotion of liquor, TVNZ maintained that it was apparent that the producer had minimised the display of the clothing as required. Further, it was also apparent that the prohibition in 27(a) about contrivances was not breached. In addition, in regard to other aspects of 27(d), TVNZ commented that, as part of DB's sponsorship of cricket, the members of the New Zealand cricket team were obliged to wear clothing bearing the DB logo during matches, at practice, and during media interviews. Thus, TVNZ concluded, broadcasters could not be a party to any contrivance in breach of 27(a).

Standard 27(b) required broadcasters not to focus on a logo, or other effect, which promoted liquor. As the programme did not do so, TVNZ said, the standard had not been breached. As standard 27(c) applied only to live-to-air broadcasts, it was considered to be inapplicable.

The bulk of TVNZ's response focused on the requirement in standard 27(d) that apparel promoting liquor, where practical, be not shown in pre-recorded programmes. TVNZ explained that, because of his cricket commitments, the times when Martin Crowe was available for interview were limited. It had been necessary to carry out most of the interview after the team's practice and at the team's hotel, mainly during the lunch break when Martin Crowe was wearing the team's official uniform. The interview during the lunch break formed the main part of the programme and the shirt bearing the logo was seen when Martin Crowe was shown demonstrating effective one day cricket shots. TVNZ reported:

In summary out of the programme's total duration of 44'27", the DB logo on Martin Crowe's t-shirt, which it was re-emphasised, constituted part of the team's official uniform when training or playing, was visible for only 2'52". On this basis the Committee was left in no doubt that the DB logo was unavoidable and was minimised as the code required.

TVNZ referred to the requirement in the Code that broadcasters follow its spirit as well as the letter and pointed out that the programme was built around a civilised conversation. The presence of a glass of wine was part of the programme's style and was not over-emphasised. TVNZ concluded:



In brief it was recognised that Martin Crowe appeared in his official "uniform" as a member and Captain of the New Zealand World Cup Cricket team, sponsored by DB. The presence of the DB logo could not be avoided but was minimised by the manner in which the programme was both shot and edited.

The complaint was not upheld.

GOAL's Complaint to the Broadcasting Standards Authority

As it was dissatisfied with TVNZ's response, in a letter dated 18 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.

GOAL rejected in particular TVNZ's argument that the programme did not breach standard 27(c) and added that the Authority should consider the complaint under standard 27(a), (b) and (d) as well.

GOAL questioned six points made by TVNZ:

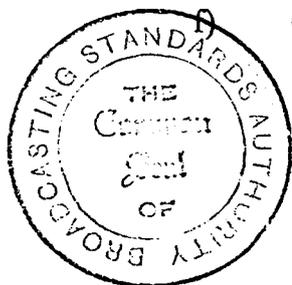
- a) As the World Cup was sponsored by a tobacco company, why did a liquor company supply the team's official dress?
- b) As TVNZ broadcast clothing "clearly contrived" by Dominion Breweries, it was a party to the arrangement between Martin Crowe and the brewery. GOAL concluded:

The producer could have insisted that Mr Crowe should obtain another shirt for the interview with his brother. This simple step would have ensured compliance with the requirement to minimise "the use of apparel ... promoting liquor ..."

- c) As TVNZ had portrayed the clothing, GOAL asked whether contracts between cricketers and brewers over-rode broadcasting standards.
- c) With reference to the footnote about recorded programmes, GOAL maintained that the broadcast breached both the letter and the spirit of the rule.
- e) It was absurd for TVNZ to claim that "The presence of the DB logo could not be avoided ...". It could have been easily avoided, GOAL insisted by the use of a plain shirt.

GOAL wrote:

Much verbiage about a "civilised programme" and "a glass of wine" appears in TVNZ's letter. It is totally irrelevant and is



perhaps in the nature of a smoke-screen.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its request is dated 20 May 1992 and TVNZ's response, 22 June.

It dealt with GOAL's points a) - f).

- a) TVNZ enclosed a letter from the chair of New Zealand Cricket Inc. who confirmed that DB was the sponsor of the New Zealand cricket team. Players, it continued, were required to wear clothing provided by DB and New Zealand cricket during practice and training as well as during matches. Further, New Zealand cricket required Martin Crowe, during any media exposure as captain of the New Zealand cricket team, to wear recognised team clothing, including sponsorship logos.
- b) TVNZ regarded GOAL's definition of the word "contrived" as contrived. It continued:

It will be appreciated that the producer could not insist that Martin Crowe wear other clothing, any more than he could insist that a clergyman remove his distinctive collar or crucifix, a Sikh remove his turban, or a Muslim woman remove her chador.

TVNZ also disputed GOAL's remark that the programme breached the spirit of the standard, adding that the spirit had been professionally observed throughout the programme.

- c) Describing the sponsorship arrangement between DB and New Zealand cricket as well-known, TVNZ said GOAL's comment about contracts overriding broadcasting standards displayed "a naivety unexpected from a seasoned campaigner".
- d) Pointing out the standard did not impose an absolute ban on incidental promotion, TVNZ stated that it occurred in situations where the broadcaster had little control over the situation. Moreover, the standards also required the exercise of professional judgment. In the present situation, TVNZ concluded, as the letter from New Zealand cricket observed, the producer had little control over what Martin Crowe wore and the producer had exercised his professional judgment responsibly.

TVNZ said that it had earlier explained to GOAL, contrary to its claims, why the broadcast of the DB logo could not have been easily avoided.



- f) TVNZ remarked that the programme's producer was at a loss to understand how anyone, without first assessing the overall style and content of a programme, could judge whether the incidental promotion of liquor had been minimised.

TVNZ said, in view of the material supplied to the Authority, that a formal hearing was not necessary and concluded:

The company would submit that the programme was carefully and professionally produced within the parameters of the programme standards, topicality and broadcaster requirements. It was produced and transmitted within the space of less than a week, but it was neither carelessly nor casually produced. We believe programme standard 27 was never placed in jeopardy.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 30 June Mr Turner, on GOAL's behalf, responded to points a) - f) above.

- a) Relying on memory, Mr Turner said that he thought that the clothing worn by the New Zealand cricket team during the World Cup differed from the clothing worn during earlier matches in the season.
- b) He accepted that Martin Crowe could insist on the clothing he chose to wear but added that TVNZ retained the right of whether or not to film.
- c) He maintained his argument, despite the comment about naivety, that TVNZ's letter suggested that sponsorship contracts overrode broadcasting standards.
- d) He argued that the standard required strict adherence during a prearranged non-advertising programme.
- e) Mr Turner expressed his belief that, because the programme had been made against a tight deadline, TVNZ accepted that it was unable to delete through editing the display of the logo on the shirt.
- f) He said he found TVNZ's statement nonsensical.

He concluded:

Finally, I repeat my plea for an oral inquiry at which cross-examination could take place. I believe that I express myself better orally than I do in writing and I also believe that the matter of incidental advertising is of great importance. A full hearing could establish a precedent which could help broadcasters and complainants.

