

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 70/92

Dated the 8th day of October 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

"Aussie League on 2" was broadcast by Television New Zealand Ltd on TV2 between 6.30 and 8.30pm on Sunday 5 April 1992. A roundel containing the Lion Red logo and the words "Lion Red Beer" appeared on the screen during the broadcast on a number of occasions.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to TVNZ that, as it was likely that Lion Red Ltd had paid for the broadcast of the roundel, its appearances containing the logo and the words amounted to liquor advertising. As liquor advertisements were forbidden between the hours of 6.00am - 9.00pm and as the saturation of liquor advertising was forbidden, the broadcasts had breached both standards.

TVNZ said the broadcasts of the roundels were sponsorship advertising, not liquor advertising, and accordingly the restriction of hours did not apply and, as the appearances were brief, an impression of saturation liquor promotion was not given. The complaint was not upheld. As GOAL was dissatisfied with TVNZ's decision, Mr Turner, on GOAL's behalf, referred it to the Authority under s.8(a) of the Broadcasting Act



Decision

The members of the Authority have viewed a substantial part of the programme complained about in order to gain a thorough impression of GOAL's complaint and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing. Because of the importance of the issue raised by the complaint, the Authority declined to accept TVNZ's submission to dismiss the complaint on the ground that the point was merely a technical one.

In its initial complaint to TVNZ, GOAL described the emblem to which it objected as a "roundel". The Authority accepts that this word is the most appropriate in the circumstances. To quote part of the Concise Oxford definition, a roundel is a small disk or a circular identifying mark such as those painted on military aircraft. The roundel which was complained about contained the Lion Breweries logo in the centre with the words "Lion Red Beer" in an outer circle around it.

GOAL's complaint about the programme "Aussie League on 2" raised two issues. First, it argued that the roundel containing the words "Lion Red Beer" did not comply with the definition of a sponsorship advertisement in the Code for Advertising Alcoholic Beverages. As it was not a sponsorship advertisement, GOAL continued, it must be a liquor advertisement and, as it was screened between 6.00pm and 8.30pm, it breached Rule C of the Schedule to the Television Liquor Advertising rules which forbids liquor advertisements in the evening before 9.00pm.

The definitions of sponsorship advertising can be found in the Code for Advertising Alcoholic Beverages and standard 27(a) of the Television Code of Broadcasting Behaviour. The Advertising Code states:

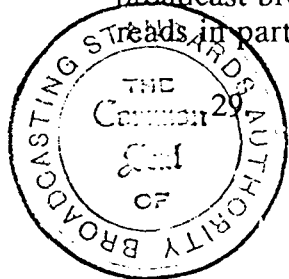
"Sponsorship Advertising" means any advertisement which contains a statement of sponsorship by or on behalf of an advertiser (product, brand or outlet) of a sports or other event (eg, "Sponsored by ...", "... proud sponsors of ...") provided always that such an advertisement does not contain any sales 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.

The appropriate section of standard 27(a) of the Television Code records:

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

Secondly, regardless of whether the broadcast of the roundels was a liquor or sponsorship advertisement, as the relevant rule applied to both, GOAL complained that the broadcast breached standard 29 of the Television Code of Broadcasting Practice which reads, in part:

Saturation or an impression of saturation of liquor promotion, including



liquor advertising, sponsorship advertising and programme sponsorship credits by liquor advertisers, must be avoided.

In relation to its complaint that the roundel was liquor and not sponsorship advertising, GOAL argued to the Authority that the addition of the word "Beer" to the brand name "Lion Red" resulted in a substantially different message. No longer did it refer just to the brand; it included a sales message and, in addition, the words depicted a liquor product.

TVNZ, in its response to the Authority, stated that the words "Lion Red Beer" identified the brand name of a product as permitted by standard 27(a). The inclusion of the word "Beer", it continued, clarified the brand name distinguishing it from, for example, Lion Red fruit juice. It did not, TVNZ maintained, introduce a sales message.

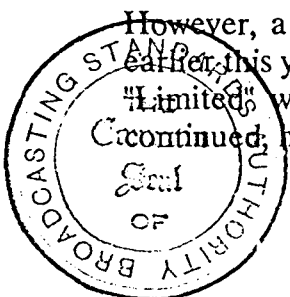
With regard to the complaint about the amount of liquor promotion, on the basis that the appearances of the roundel were brief and occurred during breaks and replays, TVNZ argued that they did not give the appearance of saturation advertising contrary to standard 29.

The Authority considered first the question whether the roundels were sponsorship or liquor advertising. It noted that at the beginning of the programme a roundel which filled the screen was broadcast under which were printed the words "Proud Sponsor". The Authority also noted that these words did not appear each time the roundel appeared on the corner of the screen. As the programme had introduced "Lion Red Beer" as the sponsor, the Authority accepted that continuing reference to the company's sponsoring role was unnecessary, especially given the small size of the roundel when it appeared in the corner of the screen.

With regard to the use of the word "Beer" in addition to the brand name "Lion Red", the Authority did not accept GOAL's argument that its inclusion turned the sponsor's name into a sales message.

The definition of a sponsorship advertisement, in addition to the prohibition on sales messages, also includes a prohibition on the depiction of liquor products, liquor packaging or the consumption of liquor. The majority of the Authority believed that that requirement had not been breached. Noting the wording at the beginning of the definition which specifically allows a statement of sponsorship on behalf of a product, the majority decided that the reference to depicting a liquor product was intended to refer to a pictorial representation rather than a "depiction" in words. When interpreting a word in the Advertising Code, consideration needs to be given to its context and, as it would be difficult to "depict" liquor packaging in words and even more difficult to "depict" liquor consumption that way, the majority did not accept that it was possible to contravene the requirement by "depicting" liquor products in words only.

However, a minority of the Authority recalled that the standards had been amended earlier this year to remove the requirement which necessitated the inclusion of the word "Limited" when referring to a sponsoring company. The amendment, the minority continued, had envisaged that a sponsor would be called "Lion Red" - not become "Lion



Red Beer". The phrase "Lion Red Beer", the minority decided, was more than the sponsor's name and the inclusion of the word "Beer" specifically depicted a liquor product. In response to the majority's view that "depict" was intended to refer to a pictorial representation, the minority referred to the Oxford Dictionary definition of "depict" as "portray in words".

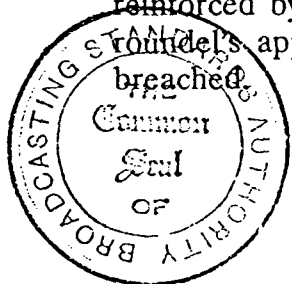
Following on from that conclusion and while it accepted that the addition of the word "Beer" did not turn the roundel into a sales message, the minority believed that the word depicted a liquor product in breach of the definition of a sponsorship advertisement. The roundel's appearances, the minority concluded, thus became a liquor advertisement which, as it was broadcast before 9.00pm, breached rule C of the Schedule to the Television Liquor Advertising Rules.

The second aspect of the complaint alleged that the frequent appearance of the roundel breached the requirement that the impression of saturation advertising be avoided. As noted above, that requirement applies both to sponsorship and liquor advertisements. Consequently, the Authority's decision on the first point is irrelevant to its assessment of the programme under standard 29.

GOAL dismissed as irrelevant TVNZ's comment that the roundel only appeared in the corner of the screen. The Authority was prepared to give a little weight to TVNZ's argument about the reduced impact owing to the small size of the roundel but regarded the number of appearances and the impression given by those appearances to be very important. It also noted that the roundel when accompanying a replay was often matched by the audio comment that a "Lion Red Replay" was being screened.

The Authority arbitrarily took one 20 minutes section of the broadcast and counted the number of times the roundel appeared. It totalled seven and was screened to accompany the following items - three replays, two player profiles and two scorelines. Moreover, four of the appearances of the roundel were accompanied by other wording on the bottom of the screen which drew the viewer's attention to the roundel. On the other hand, although the roundel appeared on seven occasions during a 20 minute sequence, each appearance was relatively brief - between three and five seconds. Thus it could be argued that the seven appearances more or less corresponded with one full length sponsorship advertisement and that one such commercial during a 20 minute spell was unlikely to give the impression of saturation advertisement.

But, as noted in the previous sentence, the standard is concerned with the *impression of saturation of liquor promotion*. That requirement inevitably involves a subjective judgment to some degree. Taking into account the impression given that the roundel was apparently screened on almost every possible occasion and that its repeated appearance, albeit brief, had a cumulative effect which had a greater impact than one single advertisement, the Authority decided in this case its appearances gave an impression of saturation of liquor promotion. The impression of saturation was reinforced by the verbal references to the sponsor which accompanied some of the roundel's appearances. Accordingly, the Authority concluded that standard 29 was



For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of "Aussie League on 2" on TV2 on 5 April 1992 breached standard 29 of the Television Code of Broadcasting Practice.

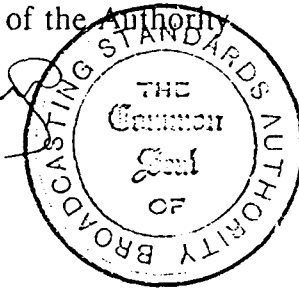
A majority of the Authority declines to uphold the complaint that the broadcast of the same programme breached Rule C of the Schedule to the Television Liquor Advertising Rules.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. As the current complaint is the first it has received under standard 29, the Authority does not intend to make an order on this occasion but it wants to make it clear to broadcasters that it will not accept sponsorship liquor advertisements gratuitously tacked onto such things as player profiles, scorelines and replays to the extent that occurred in this programme.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



8 October 1992

Appendix

GOAL's Complaint to Television New Zealand Ltd

In a letter dated 6 April 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about the programme "Aussie League on 2" broadcast on TV2 between 6.30 and 8.30pm on Sunday 5 April.

GOAL said that a roundel showing the Lion Red logo and the words "Lion Red Beer" was broadcast on numerous occasions during the programme. Expressing the belief that Lion Red Ltd had paid for that exposure, GOAL said the words advertised an alcoholic beverage and were thus in breach of the time restriction for liquor advertisements. Rule C of the Schedule to the Television Liquor Advertising Rules forbids liquor advertisements other than between 9.00pm and 6.00am.

As the roundel appeared frequently during the two hour programme, GOAL also argued that the broadcast breached standard 29 of the Television Code of Broadcasting Practice which prohibits an impression of saturation of liquor promotion.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 13 May 1992.

TVNZ maintained that the broadcast of the roundels was sponsorship advertising and, consequently, rule C did not apply. As the appearances of the roundel were brief and occurred during breaks and replays, they did not give an impression of saturation advertising. The complaint was dismissed.

GOAL's Complaint to the Broadcasting Standards Authority

As it was dissatisfied with TVNZ's decision, Mr Turner on GOAL's behalf referred it to the Broadcasting Standards Authority on 19 May 1992 under s.8(a) of the Broadcasting Act 1989.

He repeated his complaint that the broadcast of the word "Beer", as one of the words around the Lion Red logo, turned a sponsorship advertisement into a liquor advertisement. He wrote:

TVNZ has defended itself by saying that the words complained of were sponsorship advertising. It is true that the words "Proud Sponsor" appeared on the screen but what was being sponsored? The rugby game shown took place in Australia between two Australian teams so it is unlikely that Lion Red had



any direct involvement. The game would have taken place in exactly the same way even if Lion Red did not exist.

GOAL pointed out that a definition of a sponsorship advertisement was included in the Code for Advertising Alcoholic Beverages and it forbade both sales messages and the depiction of liquor products during such commercials. He argued that the words "Lion Red Beer", as they told viewers about a brand of that name, were a sales message. Further, as a product could be depicted in words, the same words depicted a liquor product.

As the brewer's sponsorship no doubt included assistance towards the cost of the broadcast, GOAL maintained that the advertisement was a liquor advertisement, not a sponsorship one, and that it was broadcast at a time prohibited by the rules.

GOAL also maintained that the numerous appearances of the roundel breached standard 29 of the Television Code.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. The request is dated 25 May and TVNZ's reply 18 June.

TVNZ wrote:

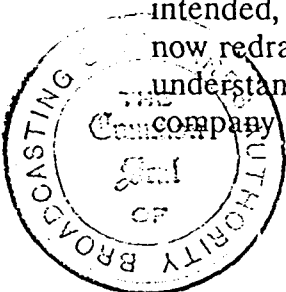
Now that brand name advertising is permitted and may be incorporated in sponsorship advertising - under Code 27(a) second sentence - it is not Lion Red fruit juice or mineral water that is the sponsor. It is Lion Red Beer and the rules permit the proper identification of the brand name of the product.

Consequently, TVNZ continued, the advertisement remained a sponsorship one and rule C did not apply.

TVNZ argued that the appearances of the small roundel were brief and, spread over a period of two hours, did not give the impression of saturation of liquor promotion.

TVNZ dismissed GOAL's concern about what activities were funded by the sponsor, saying that it was a question of the interpretation of the definition of a sponsorship advertisement given in the Code Advertising Alcoholic Beverages. It disputed GOAL's contention that the word "beer" constituted a sales message. It merely identified a product. TVNZ concluded:

Finally the company would submit that this complaint represents an attempt to give a meaning to the sponsorship advertising definition that was never intended, and shows a failure to recognise that the liquor advertising rules are now redrawn in the interests of avoiding difficulties arising from the sort of understanding (sic) technicalities which are being raised in this complaint. The company would further submit that the complaint could well be considered to



come within the scope of section 11(a) of the Act.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 23 June Mr Turner, on GOAL's behalf, stated that the sponsor had no interest in the game but, having paid for the broadcast, put the words "Lion Red Beer" in front of viewers about 20 times in a 90 minute programme.

Putting those words on the screen was liquor advertising just as the words Fresh Eggs on the gate of a house in the country is egg advertising.

He continued:

The advertisement was not transformed into liquor advertising by osmosis but by the presence of the word Beer. Brand names are allowed; Lion Red is a brand name but Lion Red Beer is a liquor product.

He also contested TVNZ's comment that the small size of the advertisement was relevant, adding that the rules did not support the view that "Lion Red Beer writ small is less offensive than Lion Red Beer writ large". He repeated his argument that 20 appearances of the roundel during a programme of 90 minutes amounted to saturation advertising.

Finally, Mr Turner enclosed a Lion Red print sponsorship advertisement in which the word "Beer" had been replaced with the word "League". Mr Turner said that the substitution had occurred at the behest of the Advertising Standards Complaints Board which thought the presence of the printed word "Beer" meant that an advertisement could no longer be regarded as a sponsorship one.

