

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 73/92

Dated the 1st day of October 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

M.C. BRADSTOCK  
of Christchurch

Broadcaster  
TELEVISION NEW ZEALAND  
LIMITED

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

DECISION

Introduction

An advertisement for Canterbury Draught beer was broadcast by Television New Zealand Ltd on various occasions in April 1992. The advertisement depicts three fishermen fishing in a South Island river and the youngest, an Auckland, is asked to drive to a hotel to buy some beer. After driving to the hotel, he asks for two slabs (four dozen cans) of "Our Beer" and remains in the hotel where he is later joined by the other two fishermen.

Mr Bradstock complained that the advertisement breached the standards in the Code for Advertising Alcoholic Beverages requiring the depiction of moderate consumption and no direct association between the consumption of liquor and the operation of a motor vehicle or other hazardous activities.

Arguing that the inferences drawn by the complainant went beyond a realistic interpretation of the advertisement, TVNZ declined to uphold the complaint. As he was dissatisfied with that decision, Mr Bradstock 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). They have also read the Advertising Standards Complaints Board's decision when it declined to uphold a complaint about the same advertisement (prior to amendment) which alleged breaches of the same standards for some of the same reasons raised in this complaint. The complaint to the Authority related to the advertisement which, after the Board's decision, was amended to remove an ambiguity about the length of the fishing trip. As is its usual practice, the Authority has determined the complaint without a formal hearing.

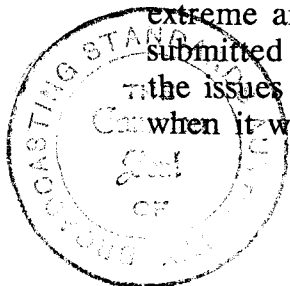
Mr Bradstock complained that the advertisement for Canterbury Draught beer breached standards 5 and 7 of the Code for Advertising Alcoholic Beverages. They read:

5. Liquor advertisements shall depict responsible and moderate consumption of liquor. They shall not promote offensive behaviour, excessive consumption or the misuse or abuse of liquor. Boisterous group scenes involving irresponsible frivolity, careless freedom and abandon, or scenes exaggerating the pleasures of companionship associated with the consumption of liquor, are not acceptable. Liquor advertisements shall not depict drunkenness, suggest the likelihood of drunkenness or encourage excessive drinking.
  
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.

Mr Bradstock said that the requirement for an advertisement to depict responsible and moderate consumption was breached by the fact that one fisherman brought two slabs of beer (four dozen cans) to be shared with two others, and then spent the rest of the day drinking in the hotel. Standard 7, he stated, was breached first by showing the use of a motor vehicle and suggesting the possibility of its later use by the fisherman who purchased the beer and stayed in the hotel, and secondly, by depicting fishermen who, after drinking alcohol possibly participated in the potentially hazardous activity of fishing in a river while wearing waders.

TVNZ declined to uphold the complaint. It argued that the points on which the complaint was based involved drawing inferences from the advertisement which were extreme and unrealistic. When the complaint was referred to the Authority, TVNZ submitted that the Authority should decline to determine the complaint on the basis that the issues had earlier been traversed by the Advertising Standards Complaints Board when it was considering a complaint about the same advertisement. In considering



TVNZ's submission on this point, the Authority records that, in Decision No: 33/92, it declined to determine a complaint about an advertisement which was withdrawn from broadcasting following the Complaints Board's decision about it. That was not the situation with the current complaint. In addition, the complaint to the Authority, although it partly overlapped with the complaint to the Board, also raised some distinct issues. The Board also noted that the advertisement which it was asked to consider was withdrawn so that a voice-over about the length of the fishing trip could be added which was designed to counter the complaint about the alleged excessive amount of beer purchased. The amended advertisement was not considered by the Board. The complaint which has been referred to the Authority involved the amended advertisement and only the standard 7 issue of drinking and driving is similar in both complaints. In those circumstances, the Authority declines to accept TVNZ's submission to decline to determine the complaint.

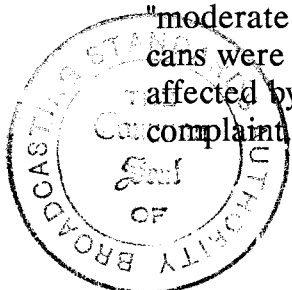
That the purchase of two slabs of beer was an excessive amount of beer for three men to drink in one day was Mr Bradstock's first complaint under standard 5. The Authority noted that the amendment to the advertisement referred to a week's fishing trip but Mr Bradstock maintained that fishermen on such trips either moved between rivers or would have arranged liquor supplies before starting out and thus the reference to one week was irrelevant.

The Authority believed that the advertisement did not explain clearly whether the two slabs of beer were designed to last one day or seven days or, indeed, for any other time. Mr Bradstock described the length of time the young fisherman spent in the hotel as the second aspect of his complaint under standard 5 on the basis that it promoted excessive consumption. Again the advertisement was ambiguous about how long the fisherman remained in the bar. Although night had fallen since his arrival, he may have been there for one or two hours, or six or eight.

The Authority also noted that the wording of standard 5 requires liquor advertisements "to depict" responsible and moderate consumption. While the standard states that liquor advertisements are not "to promote" excessive consumption, they are not required "to promote" moderate consumption.

The Authority believes that it is not particularly helpful to examine in detail a range of possible scenarios about how much alcohol might be consumed but, rather to consider the impression the average viewer gains about whether the advertisement depicts responsible and moderate consumption or whether it promotes the misuse or abuse of liquor.

It considered that the decision in this case was a borderline one. A majority of the Authority considered that the combination of the two situations complained about, ie the purchase of four dozen cans of beer during a week's fishing trip and the length of time spent in the hotel, together pushed the advertisement right to the limit of depicting "moderate consumption". If the advertisement had given the clear impression that the cans were to have all been drunk in one day or two or that the man in the hotel was affected by alcohol, then the Authority would have had no hesitation in upholding the complaint. Despite that marginal nature of the advertisement created by those



ambiguities, on balance the majority decided that it did not breach standard 5.

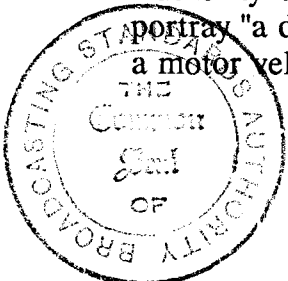
A minority of the Authority considered that standard 5 imposed a positive requirement on advertisers to "depict responsible and moderate consumption". As the advertisement was ambiguous about the length of time during which the beer had been and would be consumed and thus did not positively exclude excessive consumption, the minority decided that it breached standard 5.

The Authority next examined Mr Bradstock's complaint under standard 7 that the advertisement involved a direct association between liquor consumption and the hazardous activity of fishing in rivers while wearing waders. On this point, the Authority agreed with TVNZ that the inference drawn by Mr Bradstock involved some degree of imagination and that any association was too tenuous to justify upholding the complaint.

The Authority was more concerned about the aspect of the standard 7 complaint that the advertisement involved a "direct association" between the consumption of liquor and the operation of a motor vehicle. On the one hand, the Authority shares the widespread public concern about the dangers created by drivers who drink. On the other hand, the standard prohibits only a "direct association" between those activities. As an advertisement is unlikely to portray a person actually drinking and driving, the Authority decided that a "direct association" refers to a clear implication that those activities are linked in an advertisement. In interpreting the requirement for the portrayal of a "direct association", the Authority also took account of the requirement in standard 7 that "consumption shall clearly be after the relevant activity".

When applying that requirement in standard 7, a majority of Authority was not prepared to accept that the drinking occurred clearly after the relevant activity. The advertisement explicitly showed the fishermen's vehicle parked outside the hotel while they were inside drinking. Taking into account the impression the average viewer gains rather than examining a range of possible scenarios, the majority considered that the average viewer could well accept that there was a distinct possibility that the fishermen would use the vehicle when leaving the hotel that evening. Clarity on the point, the majority argued, could have been achieved by showing the fishermen leaving the hotel and walking away, or by verbally arranging accommodation (and a lift if necessary), or by one of their number conspicuously not drinking. Because the fishermen were not clearly shown to have finished their day's activities, the majority upheld that aspect of the complaint.

The minority of the Authority was unable to conclude that "a direct association" between the consumption of liquor and the operation of a motor vehicle was portrayed in the Canterbury Draught beer advertisement or that the liquor consumption occurred other than clearly after the relevant activity. Although the young fisherman drove to the hotel initially, the other two fishermen walked there in the evening and the minority considered that the average viewer would be left with the impression that it was unlikely that the fishermen would use their vehicle again that day. Accordingly, a minority of the Authority concluded that, because of the ambiguity in the advertisement, it did not portray "a direct association" between the consumption of alcohol and the operation of a motor vehicle.

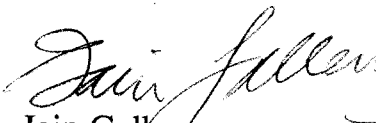


**For the reasons set forth above, a majority of the Authority upholds the complaint under standard 7 of the Code for Advertising Alcoholic Beverages. A majority declines to uphold the complaint under standard 5 of the same Code.**

In the decision, the Authority has stressed that the implications of this advertisement are genuinely ambiguous and it has been necessary to weigh carefully the impressions left by it. The Authority is at present carrying out a review of the standards applicable to the advertising of liquor in which it will seek to remove the ambiguities and deficiencies in standards 5 and 7 identified in this decision. To clarify the issue, the Authority believes that it is inappropriate, first, for liquor advertisements to depict the operation of motor vehicles unless it is perfectly clear that drinking and driving are not connected, and secondly, to allow any room for any assumption that other than moderate consumption is taking place.

Having upheld an aspect of a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act. As it regards the clarification of the standards during the present review as more important than the imposition of penalties, it does not intend to impose one on this occasion.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



1 October 1992

## Appendix

### Mr M.C. Bradstock's Complaint to Television New Zealand Limited

In a letter dated 21 April 1992, Mr Bradstock complained to Television New Zealand Ltd about an advertisement for Canterbury Draught beer which had been screened on TV2 at 10.10pm on 4 April. The advertisement, he said, depicted three people fishing in a South Island river and the youngest, an Aucklander, was asked to drive to a hotel for some beer. He asked for two slabs (four dozen cans) of "Our Beer" and remained in the hotel where he was later joined by the other two fishermen.

Mr Bradstock said the advertisement breached standards 5 and 7 of the Code for Advertising Alcoholic Beverages on four grounds.

First, as the quantity of beer was excessive for three men to drink in one day, it breached the requirement which prohibits the depiction of excessive drinking. The ambiguity about the length of the fishing trip, he added, was not solved by the addition of a reference to a week's fishing trip as it was still not clear that the beer was the sole supply for the week. He added that, from his own long experience as an angler dealing with the local weather, a fishing trip in Canterbury usually meant frequent changes of venue and trips which passed hotels. If, on the other hand, the men intended to stay in one place, he stated that it was absurd to suggest that they would not have ensured an adequate beer supply in advance.

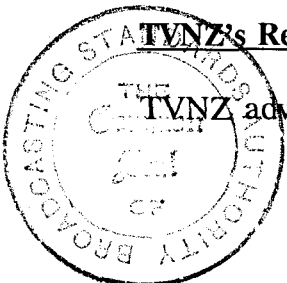
Secondly, the fisherman, who was sent to buy the beer, stayed in the bar. Arguing that the stay in the hotel lasted for some hours, Mr Bradstock added that the fisherman had been distracted from fishing by the "excessive consumption" of alcohol.

The third aspect of the complaint focused on standard 7 which prohibits a direct association between the consumption of liquor and the operation of a motor vehicle. The purchaser of the beer, Mr Bradstock claimed, after spending some time drinking at the hotel, was expected to drive back to his fishing companions. Mr Bradstock acknowledged that the situation was portrayed ambiguously but, he argued, it implied a direct association between liquor consumption and the use of a motor vehicle. Further, when the two other fishermen arrived at the hotel, they all had a drink of beer and again it was unclear whether or not the vehicle which was seen parked outside would be driven again that evening.

Lastly, the fishermen were shown wearing waders which was a potentially hazardous activity when fishing in Canterbury rivers and, when combined with the consumption of liquor, breached the requirement in standard 7 which prohibits a direct association between the consumption of liquor and potentially hazardous activities.

### TVNZ's Response to the Formal Complaint

TVNZ advised Mr Bradstock of its Complaints Committee's decision in a letter dated



12 May 1992. It said that the advertisement had been assessed under standards 5 and 7 of the Code for Advertising Alcoholic Beverages. It also noted that the same standards had been considered by the Advertising Standards Complaints Board which declined to uphold a complaint about the same advertisement. It enclosed a copy of the Board's decision.

TVNZ stated that, despite the Board's ruling, it had considered the complaint afresh and, as it regarded the inferences drawn by the complainant as unrealistic, it declined to uphold the complaint.

### Mr Bradstock's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's decision, in a letter dated 26 May 1992 Mr Bradstock referred his complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Mr Bradstock disagreed with TVNZ that his complaint was similar to the one dismissed by the Advertising Standards Complaints Board. He acknowledged that he referred to the same standards but pointed out that his reasons were different and that he had complained about some different matters.

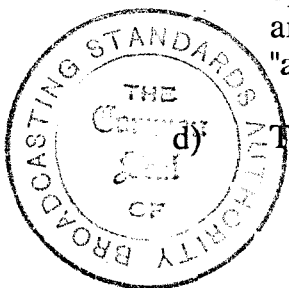
Disputing TVNZ's comment that the inferences he had drawn were unrealistic, Mr Bradstock repeated the four points made in his original complaint.

### TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comments on the complaint. Its letter is dated 8 June and TVNZ's reply, 23 July.

It dealt with the four points raised in Mr Bradstock's complaint noting:

- a) While the complainant alleged that there was no evidence that the beer was to be consumed over a period of one week, there was no evidence to assume that it might all be drunk in a shorter time.
- b) With regard to the purchaser remaining in the hotel, TVNZ said there was no evidence that he had been drinking excessively.
- c) It was extremely speculative to suggest that the young man would drive the car after drinking and, moreover, as required by the standard, there was no direct association between the consumption of liquor and the operation of a motor vehicle. In addition, the two fishermen who arrived later were complying with the standard by having a drink clearly "after the relevant activity".



d) The complaint about waders, TVNZ said, was supposition or

imagination.

Enclosing a copy of the Advertising Standards Complaints Board's decision which traversed the issues and with which it agreed, TVNZ submitted that the Authority should decline to determine the complaint. Two hearings about the same advertisement on the same grounds, it added, was not appropriate in the interests of self regulation.

### **Mr Bradstock's Final Comment to the Authority**

When asked to comment on TVNZ's response, in a letter dated 2 August 1992 Mr Bradstock made four points:

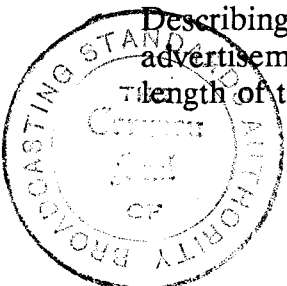
- 1 TVNZ seemed to agree that the period over which the beer was to be drunk was still ambiguous. That should be clarified in order to avoid concluding that consumption occurred over a short period.
- 2 The young man who lingered in the pub was likely to be intoxicated because he stayed there all day. The few seconds for which he was seen were not sufficient to establish whether or not he was intoxicated.
- 3 The association between drinking with driving was a concern.
- 4 There was no reason to assume that the men would not go out fishing after they have been drinking.

Mr Bradstock rejected TVNZ's suggestion that his complaint was mere supposition or imagination when advertisements were expressly designed to work on the imagination. He also submitted that the Authority should not decline to determine the complaint because of the Advertising Standards Complaints Board's decision as, although breaches of the same standards were alleged, different arguments were advanced.

### **The Decision of the Advertising Standards Complaints Board**

The Advertising Standards Complaints Board's decision on complaint 92/38 about the Canterbury Draught beer advertisement is dated 23 March 1992. The complainant, Ms C. McIntosh of the Nelson Community Council on Alcohol, alleged breaches of standards 5 and 7 of the Code for Advertising Alcoholic Beverages. The complaint under standard 5 was concerned with excessive consumption and linking macho images with beer drinking. The complaint under standard 7 related to the association between the fisherman who purchased the beer and then remained at the hotel, with the motor vehicle.

Describing the advertiser's behaviour as responsible, the Board noted that the advertisement had subsequently been amended to remove any ambiguity about the length of time during which the liquor would be consumed in order to avoid the





implication about possible excessive consumption. The Board also noted that a motor vehicle was used in the advertisement but it was not featured nor was there any direct association between the consumption of liquor and the operation of a motor vehicle. It also ruled that the advertisement did not portray exaggerated stereotyped masculine images in an overly dramatic way.

Although it could not rule on the amended advertisement which dealt with the length of the fishing trip as it had not been presented to it, the Board was pleased to note that the withdrawal of and amendment to the advertisement originally complained about had occurred in the spirit of self-regulation. The complaint was not upheld.

