

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 87/92

Dated the 12th day of November 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

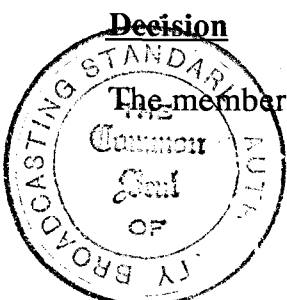
The draw of the "Steinlager Finest Tries" competition was shown on TV1's *One World of Sport* on Saturday 4 July 1992.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to Television New Zealand Ltd, as the broadcaster, about the item. GOAL said that it was a liquor advertisement which was broadcast in contravention of the time restraints and, by including footage of All Black John Kirwan, it breached the standard prohibiting the use of heroes of the young in such advertisements.

Pointing out that the item was a sponsored programme, not an advertisement, TVNZ declined to uphold the complaint. Dissatisfied with TVNZ's decision, Mr Turner on GOAL's behalf referred it to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the programme complained about and have



read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

Overview

The climax of the second "Steinlager Finest Tries" competition on TV1 involved the broadcast of the contest's draw by a current All Black before the All Blacks played a test against Australia. All the correct entries were placed in a large barrel on which the word "Steinlager" was liberally displayed. TVNZ claimed that the reference to "Steinlager" was a "sponsorship credit". GOAL claimed that the broadcast of the item was a "liquor advertisement". The differences were important because, if the broadcast was a "liquor advertisement", then it breached the rules about the time of day such items may be broadcast and by portraying heroes of the young.

The Broadcasting Act 1989 defines an "Advertising Programme" but not a "sponsorship credit" which is provided for in s.81(4) where it is referred to as an exception to an "Advertising Programme".

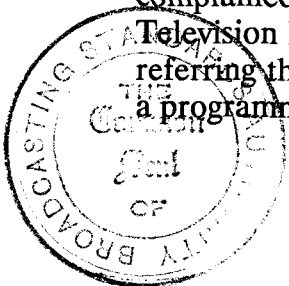
Under s.4(1)(e) of the Act, the Broadcasting Standards Authority may approve Codes of Broadcasting Practice. One such approved code is the Code for Advertising Alcoholic Beverages. This Code includes definitions of "Liquor Advertisements" and "Sponsorship Advertisements" and a clear distinction is made between them. The Schedule to the Television Liquor Advertising Rules (also an approved code) sets out some distinct requirements for liquor advertisements on the one hand and sponsorship advertisements on the other. These Rules, like the Act, also refer to "sponsorship credits" and, again like the Act, do not define this term.

The draw of the "Steinlager Finest Tries" competition did not fall obviously within the definitions of a "liquor advertisement" or a "sponsorship advertisement" and thus, TVNZ argued, must have been a "sponsorship credit". This decision discusses that argument in some detail and, while doing so, explores what is meant in the Act and the Codes by a "Liquor Advertisement", a "Sponsorship Advertisement" and a "Sponsorship Credit". The programme complained about, the draw of "Steinlager Finest Tries" competition, does not fall comfortably within the boundaries of any of these categories.

The Authority concluded that the programme was not a "Sponsorship Credit" (as TVNZ had argued) or a "Liquor Advertisement" (as GOAL had maintained) but a "Sponsorship Advertisement". The following detailed decision presents the Authority's reasoning in arriving at that conclusion.

The Complaint

GOAL maintained that the draw of the "Steinlager Finest Tries" competition screened on TV1 on the afternoon of Saturday 4 July was a liquor advertisement and, accordingly, complained that it breached the Code for Advertising Alcoholic Beverages and the Television Liquor Advertising Rules. TVNZ declined to uphold the complaint. When referring the complaint to the Authority, GOAL cited two Authority decisions in which a programme had been deemed to be an advertising programme as the broadcaster had



received financial assistance from the sponsor.

When declining to uphold the complaint, TVNZ rejected the contention that the draw of the "Steinlager Finest Tries" competition was an advertising programme. "Sponsorship credits" were broadcast, it said, under a provision in the Broadcasting Act 1989 and were different "creatures" from advertising programmes. Among the variety of liquor messages which were broadcast on television, TVNZ defined a "liquor advertisement" as a programme which was required to contain a sales message or a qualitative assessment of a product or service. A "sponsorship advertisement", it continued, was not allowed to include a sales message but was one where the sponsor provided money so that the advertisement (or programme) could be broadcast. A sponsorship advertisement required a broadcast acknowledgment of the sponsorship. A "sponsorship credit" was the other type of broadcast which included a liquor message.

As this is the first occasion on which the Authority has considered the nature of a "sponsorship credit", TVNZ's explanation of that type of message is recorded in full:

Sponsorship credits are provided where a sponsor has paid money to the Company to be associated with a certain programme or activity. Again, there is no sales message attached to the sponsor's name. Unlike sponsorship advertising, in which the industry interprets the rule as allowing only a single mention of the sponsor's name, there is no such restriction on sponsorship credits. Thus, the Montana Masterpiece Theatre series legitimately includes a sponsorship credit at the beginning and end, and before and after each of the commercial breaks. Similarly there is no restriction on the number of sponsorship credits in programmes like that of the Steinlager Finest Tries draw.

TVNZ observed that a sponsorship credit was legislatively acknowledged in s.81 of the Broadcasting Act 1989. Furthermore, the Authority acknowledges that it is referred to in the Note to standard 27 and the body of standard 29(ii) of the Television Code of Broadcasting Practice, and in Rule E of the Schedule to the Television Liquor Advertising Rules.

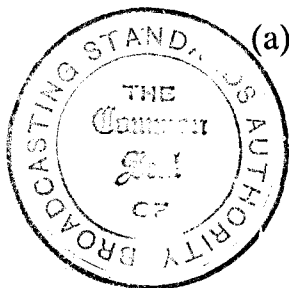
In determining this complaint it has been necessary for the Authority to define the concept "sponsorship credit" and, by way of introduction, it is thought appropriate to record the references in full noted in the previous paragraph.

The Requirements in the Act and the Codes

Section 81 of the Broadcasting Act 1989 states:

81 Advertising hours - (1) Subject to subsection (4) of this section, no broadcaster shall broadcast advertising programmes on television -

- (a) During the hours between 6am and noon on -
- (i) Sunday; or
 - (ii) Anzac Day; or



- (b) On -
 - (i) Christmas Day; or
 - (ii) Good Friday; or
 - (iii) Easter Sunday

(2) Subject to subsection (4) of this section, no broadcaster shall broadcast advertising programmes on sound radio on -

- (a) Christmas Day; or
- (b) Good Friday; or
- (c) Easter Sunday

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 who contravenes subsection (1) or subsection (2) of this section.

(4) Nothing in this section prevents the inclusion in any programme broadcast on television or sound radio of a credit in respect of a sponsorship or underwriting arrangement entered into in relation to the programme.

The Note to standard 27 of the Television Code of Broadcasting Practice records:

Note: In programmes sponsored by liquor advertisers care should be taken to ensure that this standard is strictly adhered to and that any programme sponsorship credit fully complies with the *Code for Advertising Alcoholic Beverages* and the *Schedule*. It is recognised that logos of a discreet size and style are commonly worn and that sporting grounds and other venues display signage which is outside the broadcaster's control. The inclusion of avoidable incidental advertising may result not only in the breach of this standard but also in the entire programme being deemed an advertisement and subject to the rules for liquor advertising, not sponsorship advertising.

Standard 29 provides:

- 29 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 particular
- (i) Advertisements for competitive liquor products will not be scheduled to be played consecutively in any one break and liquor advertisements will be mixed with advertisements for other products.
 - (ii) Sponsorship advertising and/or programme credits by liquor advertisers will be carefully scheduled to avoid an impression of saturation of liquor promotion.

Finally, Rule E includes the following requirements:



E Sponsorship advertisements, including sponsorship credits, by liquor advertisers shall be subject to the same rules as apply to liquor advertisements in the Code subject to the following rules:

- (i) They shall refer only to the promotion of sporting, cultural or social events, person(s) or activities, or the broadcast of the event, and the sponsor's support.
- (ii) They shall not imitate or use any parts of liquor advertisements (including packaging), with the exception of a brief mention of a company name, brand name or logo.
- (iii) They may feature heroes or heroines of the young
 - (a) participating in a sponsored event or activity or
 - (b) engaged in conduct related to a sponsored event, person or activity

provided there is strict adherence to Rule A.

The above extensive citations have been included to indicate that provision was made for sponsorship credits when the new rules for liquor advertising came into effect on 1 February this year. However, a "sponsorship credit" was not defined and the Authority is now required to decide, having regard to the references to it, whether it is distinct from a liquor or a sponsorship advertisement, as claimed by TVNZ, or whether it is an aspect of a liquor advertisement as suggested by GOAL.

In considering this disagreement, the Authority intends to advance one more extract from the Broadcasting Act. It is the definition of an "Advertising programme" and reads (s.2):

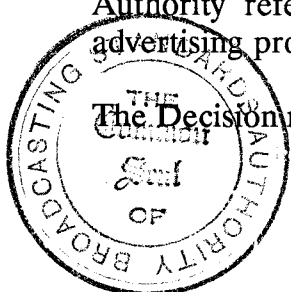
"Advertising programme" means a programme or part of a programme intended to promote the interest of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made, whether in money or otherwise:

Decision

It could be said that it went without argument that the draw of the "Steinlager Finest Tries" competition fulfilled the requirements for an "Advertising programme" in that the broadcast promoted "Steinlager's" interests and money was paid to TVNZ for a package of exposure in connection with rugby.

However, rather than accepting that argument on this point without question, the Authority refers, first, to a previous decision which involved the definition of an advertising programme, and secondly, to s.81 of the Act recorded above.

The Decision referred to is one cited by GOAL in support of the current complaint, No:



36/91, and it involved a complaint from GOAL about TV3's broadcast of the DB Triathlon. Although the Authority upheld the complaint, it stated:

[T]he Authority was not prepared to make a blanket decision that any sponsored broadcast, or broadcast where the broadcaster has received some payment, would automatically transform the programme into an "Advertising programme". Taking into account the requirements of the Act, in the Authority's opinion it is a matter of degree and it requires the assessment of each programme individually.

Taking into account the extent of the display of the "Steinlager" logo during the draw of the "Finest Tries" competition, the Authority decided that the degree of advertising was such that it fell within the statutory definition of an advertising programme.

However, the Authority still had to decide whether that definition of the broadcast - as an advertising programme - was irrelevant in view of the provision in s.81(4).

Section 81 prohibits the broadcast of advertisements at certain hours and, totally, on certain days. It provides an exception from that ban for a sponsorship credit. The Authority notes that the exception in s.81(4) applies to advertising programmes which are referred to in s.81(1), (2) and (3). Accordingly, the Authority decided that in view of the wording of the section, the "credit in respect of sponsorship" in subsection (4) referred to a subset of the advertising programmes referred to in the previous subsections. It did not create, to use TVNZ's word, a distinct "creature". Not only did a "credit" refer to an advertising programme, the Authority decided, in view of the legislative provision for its broadcast when other advertisements were prohibited, that a credit was a type of advertisement which was distinctly briefer and repeated less often than a full advertisement.

TVNZ described the acknowledgments broadcast for the "Montana Masterpiece Theatre" as a sponsorship credit. The Authority concurred. It was not necessary to decide on the number of sponsorship credits which are acceptable in one broadcast but the Authority agreed with TVNZ's comment about the appropriate use of sponsorship credits when it said:

The Montana Masterpiece Theatre series legitimately includes a sponsorship credit at the beginning and end, and before and after each of the commercial breaks.

TVNZ advanced that point of view in its effort to justify its argument that there were no restrictions on the number of sponsorship credits which might be broadcast. In view of the reference to sponsorship credits in s.81(4) as an exception to general advertising programmes and the implication that they will be less intrusive, the Authority does not accept that part of TVNZ's submission.

TVNZ also argued for an unlimited number of sponsorship credits on the grounds that the broadcasting industry interpreted "sponsorship advertising" as allowing only a single mention of the sponsor's name. As will be apparent from the extracts printed above, the standards are not precise on the point. The standards include the prohibition on the



impression of saturation advertising and the Authority records that it is considering the role and frequency of sponsorship advertisements in its current revision of the alcohol advertising standards.

Having decided, first, that the references to "Steinlager" in the draw of the "Finest Tries" competition were an advertisement because a "sponsorship credit" is a subset of an advertising programme, and secondly, pursuant to its ruling in Decision No: 36/91 that the extent of the promotion justified describing the programme as an advertising programme within the Act's definition, the Authority was then required to decide what sort of advertising programme it was. The choice is between a liquor advertisement and a sponsorship advertisement. The Code for Advertising Alcoholic Beverages supplies the following definitions.

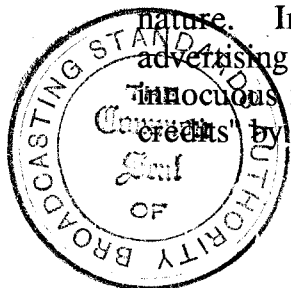
"Liquor Advertising" means the promotion of the sale of liquor, whether by product, brand or outlet, other than in premises licensed to sell liquor, where payment is made or received by any party to this Code. "Liquor Advertisement" has a corresponding meaning. This definition does not include "Sponsorship Advertising" as defined herein.

"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 distinction is very relevant to the present complaint as different rules apply to each type of advertising and GOAL complained specifically that the broadcast was a liquor advertisement and that it breached rules applicable to such advertising.

A fundamental distinction between these two types of advertising is that liquor advertisements contain a sales message while sponsorship advertisements do not. The Authority accepted that the broadcast complained about did not contain a sales message and therefore it was either a sponsorship advertisement or, as TVNZ maintained, a sponsorship credit. TVNZ described the item as a sponsorship credit, and not a sponsorship advertisement, as it did not include the words "Sponsored by" and thus it fell outside the definition of a sponsorship advertisement.

In dealing with this submission, the Authority considered that because s.81(4) allows for some advertising acknowledgments when full advertising is prohibited, provision is made for a sponsorship credit which consists of advertising of a relatively low-key or bland nature. In the Authority's opinion s.81 does not contemplate the extent of the advertising apparent in the "Finest Tries" draw. Indeed, in view of their expected innocuous nature, the Authority believes that the advertising allowed for "sponsorship credits" by Rule E(ii) and (iii) (recorded above) might need to be revised.



The Authority also decided that the fact that the "Steinlager Finest Tries" broadcast involved a competition did not affect its decision. It accepted that a liquor company was entitled, as any other sponsor, to the credit as the promoter of a competition, even on a Sunday morning, although in that case it would have to be bland and innocuous.

Having reached these conclusions, the Authority was inclined to the conclusion that the advertisement was intended to be a sponsorship one despite the fact that it did not contain a statement of sponsorship. The Authority examined the (inadequately framed) definitional statements and asked what was the fundamental distinction between liquor and sponsorship advertisements. From that examination, it was apparent that sponsorship advertisements were allowed on many occasions when liquor advertisements were prohibited first, because of the intention to exclude sales message from the broadcast, and secondly, for the distinction to be acknowledged by a statement of sponsorship. Provision was thus made for a sponsorship advertisement which excluded a sales message but which allowed, indeed required, the inclusion of the sponsor's name.

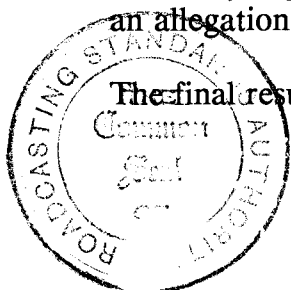
In the Authority's opinion, the essential attributes of the distinction in the definitions of liquor and sponsorship advertisements were the exclusion of a sales message and the inclusion of a statement of sponsorship. Although the mandatory requirement for a statement of sponsorship in a sponsorship advertisement can also be seen as a way to ensure that the sponsor, and not someone else, received the credit for the broadcast, in the Authority's opinion the omission of the compulsory statement of sponsorship, although it could mean that the advertisement did not comply with the requirements in the standards for a sponsorship advertisement, did not eliminate and destroy the essential characteristic of sponsorship advertising.

Summary

The Authority understands TVNZ's interpretation of the reference to "sponsorship credits" in the Codes and, because the programme was not obviously either a liquor or sponsorship advertisement, that the reference in the Act and the Codes to a "sponsorship credit" might be applicable. However, the Authority did not accept TVNZ's interpretation of what the legislation intends by the use of the term "sponsorship credit".

The Authority also accepted that the broadcast was an "advertising programme" within s.2 of the Act and, consequently, it had to decide whether it was a "liquor" or "sponsorship" advertising programme. As explained in detail above, it regarded a "sales message" as one essential feature of a "liquor" advertisement and, as a corollary, the absence of such a message as the basic requirement of a "sponsorship" advertisement. In addition, as a "sponsorship advertisement", it was required to acknowledge the sponsorship. The broadcast did not contain a sales message and, thus, was not a liquor advertisement. The Authority concluded that the programme was in fact a "sponsorship programme" although to comply strictly with the definition, the Authority believed that the item should have included a statement of sponsorship. By failing to do so, in the Authority's opinion the advertisement breached that requirement in the Code. However, an allegation to that effect was not an aspect of GOAL's complaint.

The final result of the Authority's decision was that GOAL's complaint which alleged a



breach of the liquor advertising rules was not upheld but that TVNZ's reasoning for declining to uphold the complaint was based on an inaccurate interpretation of the legislation.

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

As the Authority has declined to uphold the complaint which alleged that the item was a liquor advertisement, strictly it is not necessary to comment further. Nevertheless, it does so with the intention of assisting parties in the future. It has already stated that, if the complaint had been on the basis that the item was a sponsorship advertisement, it would have ruled that it breached the requirement in the Code which requires a statement of sponsorship. Furthermore, in view of the large number of logos printed on the barrel from which the winner's name was drawn, the Authority would have been prepared to conclude that the amount of avoidable incidental advertising was excessive to the degree that it breached the requirement in standard 27. In addition, and contrary to standard 29, the item gave the impression of saturation of liquor promotion.

As noted in the body of the decision, the Authority believes that the definition of "sponsorship advertising" in the Code for Advertising Alcoholic Beverages is inadequate and misleading. Further, it believes that the references to "sponsorship credits" in the Note to standard 27 of the Television Code of Broadcasting Practice and in Rule E of the Schedule to the Code should be revised to ensure that they comply with the intent of the reference to the "sponsorship credits" in s.81(4) of the Act.

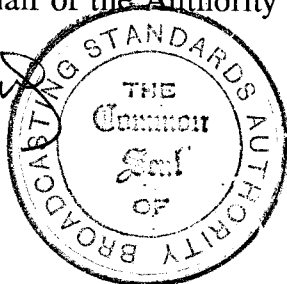
The Authority is reviewing the liquor advertising rules at present and announces that it intends to examine and clarify these matters.

Furthermore, in Decision No: 57/92, dated 14 September, the Authority ruled on a complaint from the Growth Through Moderation Society about the action taken by TVNZ after upholding a complaint about the draw by the All Black Captain of the previous "Steinlager Finest Tries" competition. TVNZ upheld the complaint as the programme inadvertently contained a sales message. Because of TVNZ's ruling, the definition of a sponsorship credit was not an issue. In the Decision the Authority accepted that the reference to "Steinlager" was a sponsorship credit which, because of a technical mistake, was transformed into a liquor advertisement.

Having now examined the references to a "sponsorship credit" in the Act and the standards and, although it does not alter the outcome of the Growth Through Moderation Society's complaint, the Authority resiles from its statement in Decision No: 57/92 in which it accepted the reference to "Steinlager" as a "sponsorship credit".

Signed for and on behalf of the Authority

Jain Gallaway
Jain Gallaway
Chairperson



12 November 1992

Appendix

GOAL's Complaint to Television New Zealand Limited

In a letter dated 6 July 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, wrote to Television New Zealand Ltd about the draw of the "Steinlager Finest Tries" competition shown on TV1 on Saturday afternoon, the 4th July.

By showing All Black John Kirwan during the item, he complained, the broadcast breached standard 4 of the Schedule to the Television Liquor Advertising Rules. Further, it had been broadcast at a time at which the standards prohibited liquor advertisements.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 6 August 1992. It pointed out that both the provisions cited applied to liquor advertisements. However, as the item broadcast was a sponsored programme, not an advertisement, they did not apply and, accordingly, the complaint was not upheld.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, Mr Turner on GOAL's behalf referred it to the Broadcasting Standards Authority on 17 August under s.8(a) of the Broadcasting Act 1989.

GOAL wrote:

TVNZ defends its rejection of GOAL's complaint by denying that the item about which the complaint was made was an advertisement. If payment was made to TVNZ to broadcast the item then it was clearly an advertisement as defined in the Broadcasting Act 1989.

GOAL cited two Authority decisions (Nos: 36/91 and 56/91) where the broadcaster had received financial assistance from a sponsor and, as a result, in both cases the Authority had ruled the broadcast to be an advertising programme.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 24 August 1992 and TVNZ's response, 4 September.



Contrary to GOAL's opinion, TVNZ argued that the item was not an advertising programme, "but a programme containing sponsorship credits". It referred to s.81 of the Broadcasting Act 1989 which allows for the broadcast of sponsorship credits during times when advertising programmes are prohibited. Maintaining that sponsorship credits and advertising programmes were "different creatures", TVNZ stated:

In the case of the *Finest Tries Draw* the references to Steinlager in the programme were by way of sponsor identification and did not constitute an advertisement in the terms of the definition contained in the Broadcasting Act 1989. There was no sales message.

TVNZ continued by defining what it, and the Television Commercial Approvals Bureau, understood by "advertisement", "sponsorship advertisement" and "sponsorship credit".

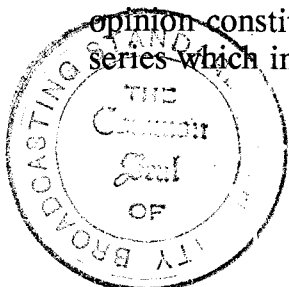
An advertisement, it said, must contain a sales message or a qualitative assessment of a product or service. A sponsored advertisement was one where the sponsor provided the money so that the advertisement could be broadcast but the acknowledgment to the sponsor did not contain a sales message.

Sponsorship credits are provided where a sponsor has paid money to the Company to be associated with a certain programme or activity. Again, there is no sales message attached to the sponsor's name. Unlike sponsorship advertising, in which the industry interprets the rule as allowing only a single mention of the sponsor's name, there is no such restriction on sponsorship credits. Thus, the *Montana Masterpiece Theatre* series legitimately includes a sponsorship credit at the beginning and end, and before and after each of the commercial breaks. Similarly there is no restriction on the number of sponsorship credits in programmes like that of the *Steinlager Finest Tries draw*.

TVNZ explained the format of the item complained about:

The *Steinlager Finest Tries Competition* was part of a much larger package whereby Steinlager (which is the sponsor of the *All Blacks*) has paid money to Television New Zealand to be associated throughout the year with rugby coverage on TV One. In such a sponsorship arrangement, Steinlager has no direct involvement in programme production. Steinlager's specific involvement in the *Finest Tries Competition* was in the provision of prizes.

It concluded by noting that such arrangements were not unusual and did not, in its opinion constitute advertising. It referred to several other comparable sponsored series which involved a competition and where the sponsors provided the prizes.



GOAL's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 10 September Mr Turner on GOAL's behalf expressed amazement that TVNZ had the "gall" to maintain the programme complained about was not an advertising programme.

GOAL continued:

TVNZ implies in the sixth paragraph that unless a programme contains a sales message it is not an advertisement. This is not so; any programme which promotes the interest of any person or promotes a product for the commercial advantage of any person is an advertising programme if payment is made to the broadcaster to transmit the programme.

TVNZ has admitted it received payment to transmit the programme and the frequent appearance of the word "Steinlager" must surely be regarded as the promotion of a product.

The "similar sponsorships" mentioned by TVNZ are irrelevant. To link the Steinlager promotion with Montana Masterpiece Theatre is absurd.

It referred to the Authority's comment in Decision No: 56/91 (dated 4 December 1991) where the Authority observed:

The Authority records, again, its concern about both liquor and sponsorship advertising. In developing a new code in conjunction with the broadcasters, the Authority notes that different requirements will apply to liquor sponsorship advertising. It further notes that it will have little sympathy for broadcasters if they allow the distinction between these advertisements to be blurred in an attempt to promote the advertising of liquor under the guise of sponsorship.

GOAL maintained that the complaint should be upheld.

