

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 88/92

Dated the 12th day of November 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

HEALTH ACTION

of Nelson

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

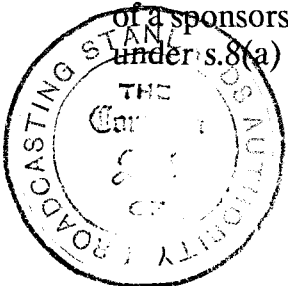
Introduction

A "Steinlager Finest Tries" competition was shown on TV1's *One World of Sport* on Saturday 23 May 1992.

Health Action of Nelson complained to Television New Zealand Ltd, as the broadcaster, that the wording which was broadcast describing "Steinlager" as New Zealand's "Finest Beer" meant that the broadcast was a liquor advertisement. By including footage of All Black John Kirwan, it continued, it breached the standard prohibiting the use of heroes of the young in liquor advertisements.

TVNZ acknowledged that some wording had been transposed because of a technical mistake and, consequently, a sponsorship credit had become a liquor advertisement. It upheld the complaint and reported that action had been taken to remedy the problem and that staff had been advised again of the need for vigilance.

As Health Action was dissatisfied with some of TVNZ's reasoning about the attributes of a sponsorship credit, it 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 a tape of the item to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its usual practice, the Authority has determined the complaint without a hearing.

Ms Liz McPherson of Health Action referred this complaint to the Authority because she was dissatisfied with TVNZ's comments about why the complaint would not have been upheld if the technical error had not occurred. As it accepted TVNZ's decision and the action it took when it upheld the complaint, the referral does not comply strictly with the provisions of s.7(3) of the Broadcasting Act which states that a complainant may refer a complaint to the Authority under s.8 "to seek an investigation and review of the broadcaster's action or decision, as the case may be".

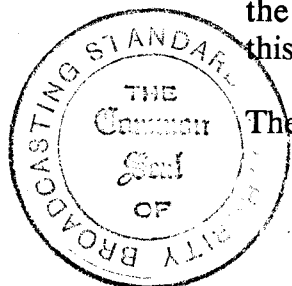
Nevertheless, on the basis that the complainant is seeking a review of the broadcaster's comments included in and relevant to its decision, the Authority has accepted the complaint. The complainant's concerns are dealt with thoroughly by the Authority in Decision No: 87/92 when it determined GOAL's complaint against the broadcast by TVNZ on 4 July of the draw of the "Steinlager Finest Tries" competition". That Decision dealt with a complaint about the broadcast of the "Steinlager Finest Tries" competition on 4 July in which "Steinlager" was no longer described as "New Zealand's Finest Beer" and it included an **Overview** which recorded:

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

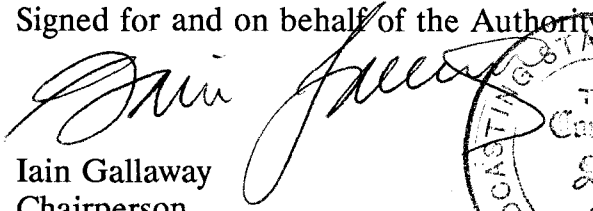


the definitions of a "liquor advertisement" or a "sponsorship advertisement" and thus, TVNZ argued, must have been a "sponsorship credit". This decision discusses that argument in some detail and, while doing so, explores what is meant in the Act and the Codes by a "Liquor Advertisement", a "Sponsorship 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.

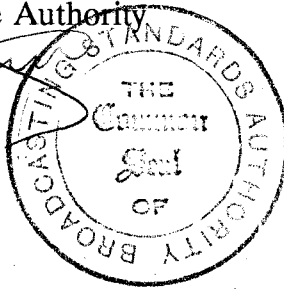
The Authority concluded that the programme was not a "Sponsorship Credit" (as TVNZ had argued) or a "Liquor Advertisement" (as GOAL had maintained) but a "Sponsorship Advertisement".

As Health Action, when it referred the complaint to the Authority about a broadcast on 23 May 1992, did not challenge TVNZ Ltd's decision, a determination as to whether the complaint is upheld or not upheld is not called for.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



12 November 1992

Appendix

Health Action's Complaint to Television New Zealand Limited

In a letter dated 8 June 1992, Ms Liz McPherson of Health Action in Nelson complained to Television New Zealand Ltd about an item on TV1's *World of Sport* on Saturday 23 May.

The item was the "Steinlager Finest Tries" competition and because the wording which was broadcast described "Steinlager" as New Zealand's "Finest Beer", the complainant said the item was a liquor advertisement. By including footage of All Black winger, John Kirwan, it continued, it breached the standard which prohibited the use of heroes of the young in liquor advertisements.

TVNZ's Response to the Formal Complaint

TVNZ advised the complainant of its Complaints Committee's decision in a letter dated 10 July. It said that the reference to "Steinlager" should have been a "sponsored programme identification" which would not have breached the rules. However, the description of "Steinlager" beer as "New Zealand's Finest", turned the announcement into a sales message subject to the Code for Advertising Alcoholic Beverages, and, by showing All Black John Kirwan scoring a try, it breached standard 4 of the Code.

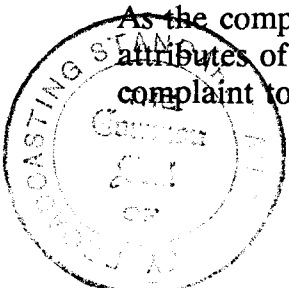
Emphasising that great care was usually taken to ensure compliance with the liquor advertising rules, TVNZ explained that a mistake had occurred on this occasion because of an imperfectly transmitted message sent by a fax machine. It continued:

As soon as this chain of events was discovered during the course of further inquiries into formal complaints the words were erased from further broadcast copy. Any reference to beer alone was not seen as being prohibited by the rules, nor the fact that a statement of sponsorship was not carried as the broadcast did not constitute sponsorship advertising as such. It was a notification of sponsorship for a programme segment which is a different thing.

Given the circumstances of the technicality which served to convert the sponsorship credit to a liquor advertisement your complaint was upheld. Action had already been taken to remedy the matter and all staff concerned have been re-alerted to the need for constant vigilance.

Health Action's Complaint to the Broadcasting Standards Authority

As the complainant was dissatisfied with some of TVNZ's reasoning about the attributes of a sponsorship credit, Ms Liz McPherson on its behalf referred the complaint to the Authority under s.8(a) of the Broadcasting Act 1989. The



complainant disputed TVNZ's remark:

Any reference to beer alone was not seen as being prohibited by the rules.

In response, it argued,

The Code for Advertising Alcoholic Beverages states a sponsor's name and/or logo may be used provided that name and/or logo contains no other reference to liquor, and that the sponsorship advertisement must not depict liquor products.

Secondly, the complainant noted that TVNZ referred to "notification of sponsorship". On the understanding that there was a clear distinction between sponsorship advertising and liquor advertising, the complainant argued that TVNZ, by referring to a "notification of sponsorship for a programme segment", was creating a category to which the rules did not refer.

TVNZ's Response to the Authority

As is its usual practice, the Authority sought the broadcaster's response to the complaint. Its letter containing the papers is dated 28 August and TVNZ's reply, 3 September.

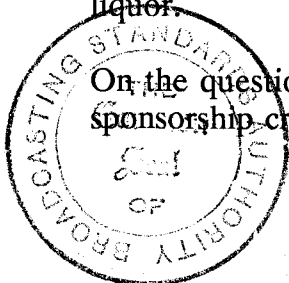
TVNZ began by pointing out that Health Action's complaint had been upheld as the inclusion of the word "Finest" transformed a sponsored programme into an advertisement. Action had been taken to ensure that such mistakes did not recur.

In discussing the complainant's remark that the word beer by itself was not allowed in sponsorship advertisements, TVNZ referred to the new standards which came into operation in February 1992. It continued:

In the Company's view the use of the word "beer" in conjunction with the sponsor's name and/or logo clearly comes within the ambit and intent of the Code and is in accordance with accepted and well established interpretation of what constitutes a sponsorship credit or sponsorship advertisement (as the case may be) as opposed to a liquor advertisement containing a clear sales message. The use of the word "beer" serves only to identify the product (as contemplated in the definition of sponsorship advertising) and does not and was never intended to be a sales message.

It argued that the complainant misread the definition of "sponsorship advertising" in the Code for Advertising Alcoholic Beverages. The Code prohibited the inclusion of a sales message in a sponsorship advertisement, it did not prohibit a reference to liquor.

On the question of the phrase "notification of sponsorship", TVNZ said that a sponsorship credit and sponsorship advertisement were totally distinct. It



acknowledged that the term sponsorship credit was not defined in the Broadcasting Act or the Codes but, pointing to s.81(4) of the Act where provision was made for a sponsorship credit which was not an advertisement, continued:

Put simply a sponsorship advertisement usually embraces a "sponsorship credit" whereas a sponsorship credit per se is broadcast in conjunction with a programme (which programme would not otherwise promote the interests of the sponsor). Sponsorship credits are used to identify the sponsor rather than to promote the quantities or qualities of a product of the sponsor.

Pursuant to this reasoning, TVNZ concluded, the item complained about had not been transformed into an advertisement:

the item would clearly have been a sponsored programme identification, a sponsorship credit, or notification of sponsorship (whichever is preferred)

Health Action's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 8 October Ms McPherson, on Health Action's behalf, maintained that the reference to beer amounted to a reference to a liquor product. As sponsorship advertisements were not allowed to contain references to liquor products and, in addition, were required to include a statement of sponsorship, it could not be a sponsorship advertisement. As a sponsorship credit was not defined in the Act or the Codes, then the broadcast could not have been such a thing.

Health Action maintained that the advertisement was a liquor one which, because it featured a hero of the young, breached the standards for such advertisements.

