

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 116/93

Dated the 8th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

HEALTH ACTION
of Nelson

Broadcaster
TV3 NETWORK SERVICES
LIMITED

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

DECISION

Introduction

Upon setting a new cricketing record - scoring more runs in test cricket than anyone else - Australian cricket captain Allan Border was interviewed on TV3's *3 National News* on 26 February 1993. The broadcast was in the team's dressing room. Throughout the interview, Mr Border was seen to be wearing a sun visor (eyeshade) carrying the Castlemaine XXXX beer logo.

On behalf of Health Action in Nelson, Ms McPherson complained to TV3 Network Services Ltd that, by showing the logo on the visor throughout the interview, the broadcast breached the standard which requires that incidental liquor promotion be minimised.

Pointing out that Mr Border was contractually required to wear the visor for television interviews and that the logo had not been focussed on, TV3 declined to uphold the complaint. Dissatisfied with TV3's response, Ms McPherson on Health Action's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the item 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.

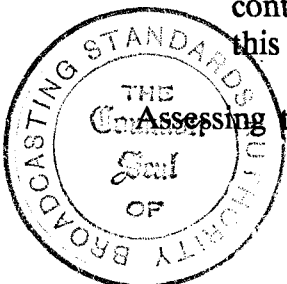
Allan Border, the captain of the Australian cricket team achieved a cricketing milestone on 26 February 1993 in Christchurch when he scored more runs in test cricket than anyone else. TV3's news that evening between 6.00 - 7.00pm, *3 National News*, included an interview with Border in the team's dressing room under the grandstand. During the interview he was wearing a sun visor (eyeshade) carrying the XXXX beer logo and he was seen twice during the interview to adjust the visor or, in one case, possibly put it on. One of the shots showed Allan Border surrounded by his team mates and although a few of the other players wore cricket caps, no one else appeared to be wearing the visor bearing the logo.

On behalf of Health Action in Nelson, Ms McPherson complained to TV3 that because of the length of time during which the visor was apparent, the broadcast breached the requirement in standard 27 of the Television Code of Broadcasting Practice that the incidental promotion of liquor must be minimised. Standard 27 reads:

- 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 promoting liquor is minimised and, where practical, not shown or referred to at all.
 - (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 in the letter.

Assessing the complaint under standard 27(b), TV3 argued that Allan Border, as an



employee of the brewery which made XXXX, was contractually required to wear the company's headgear when interviewed on television. Nevertheless, it said that the camera operator had made a special effort to exclude the logo although, because the XXXX logo was included on other parts of the team's clothing, it was not possible "to conduct any meaningful coverage in a group situation yet not show the logo". In addition, TV3 argued that the camera operator had little control of the interviewee's dress.

When she referred the complaint to the Authority, Ms McPherson maintained that the shots of the logo could have been reduced by the use of different camera angles. She also argued that the complaint should be assessed under standard 27(c) rather than 27(b).

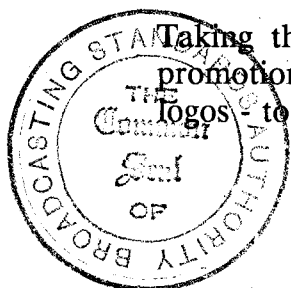
The Authority considered first the point about which aspect of standard 27 was relevant. Although both clauses (b) and (c) were applicable, the standard refers to situations with more specificity from clauses (a) to (d) and, accordingly, the Authority accepted that 27(c) described more accurately the situation which gave rise to the complaint as it involved a "live, on-location interview". In coming to this conclusion, however, the Authority would record that the principle contained throughout the standard - that the incidental promotion of liquor be minimised or, where practical, not shown - remains unaltered.

Next, the Authority considered the substantive matter raised by the complaint - that is whether TV3 as the broadcaster had ensured that the incidental promotion of liquor was minimised or, where practical, not shown during the live interview with cricketer Allan Border.

On the one hand, the Authority took into account the fact that the camera operator seemingly tried to ensure that the visor was not the focus of each shot and that, furthermore, for most of the interview the more obvious logo was excluded from the shot completely. As the logos elsewhere on the players' clothing were relatively discreet, the Authority was of the opinion that they increased only marginally the amount of incidental promotion which was broadcast. In other words, some effort had been made to reduce the amount of incidental liquor promotion which had been broadcast.

On the other hand, the Authority noted that the XXXX logo was printed on different parts of the visor, including its peak, and was difficult not to include in the broadcast and that, although it was not obviously focussed on, it was clearly distinguishable for what it was during a good part of the interview. The Authority also took into account the point that the interview took place inside where a visor to protect the eyes from the sun was unnecessary. Furthermore, in response to the point made by TV3 that Allan Border was contractually obliged to wear the visor, the Authority observed that TV3 was not a party to that contract and could have asked that the visor be removed before any interview was carried out.

Taking these different perspectives into account, the Authority concluded that the promotion of liquor was contrived - the indoor use of a sun visor emblazoned with liquor logos - to ensure that at least some promotion was broadcast. Accordingly and noting



that the rules had been prepared to protect young people from excessive alcohol promotion by their sporting heroes, the Authority concluded that the incidental promotion of liquor had not been minimised as required by standard 27.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by TV3 Network Services Ltd of an item on *3 National News* on 26 February 1993 breached standard 27 of the Television Code of Broadcasting Practice in that, by showing an interviewee wearing a visor bearing a liquor company logo, the incidental promotion of liquor was not minimised.

Having upheld a complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so for two reasons. The first is that it was apparent that the broadcaster had made some attempt to comply with the standard. Secondly, the Authority noted that, following its review of all the standards concerned with the liquor advertising by broadcasters and their incidental promotion of liquor, the applicable standard has been clarified and the requirements are now more straightforward.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



8 September 1993

Appendix

Health Action - Nelson's Complaint to TV3 Network Services Limited

In a letter dated 24 March 1993, Ms Liz McPherson on behalf of Health Action in Nelson complained to TV3 Network Services Ltd about an item on *3 National News* between 6.00 - 7.00pm on 26 February.

The item, she wrote, was an interview with Australian cricketer Allan Border who was shown wearing a visor with the beer logo, XXXX, across the front. The interview she continued, ran for some minutes and the logo was visible throughout.

Ms McPherson said that standard 27 of the Television Code of Broadcasting Practice, which prohibits the incidental promotion of liquor, was breached by the broadcast. Furthermore, she added that Mr Border was seen to change from his playing hat to the visor at the beginning of the interview.

TV3's Response to the Formal Complaint

TV3 advised Health Action of its Complaints Committee's decision in a letter dated 14 June 1993 and reported that the complaint had been considered under standard 27(b) of the Code.

Pointing out that the interview marked an historic cricketing occasion, TV3 said that Allan Border was contractually required to wear the company's headgear when interviewed on television. However, the camera operator had made a special effort to exclude the logo on the visor although, because the XXXX logo was emblazoned on other parts of the cricket team's clothing, it was not possible "to conduct any meaningful coverage in a group situation yet not show the logo".

Arguing that the occasion warranted an interview and that the camera operator, while not dwelling on the logo, had little control of the interviewee's dress, TV3 declined to uphold the complaint.

Health Action's - Nelson's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's action, in a letter dated 8 July 1993 Ms McPherson on the complainant's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Ms McPherson argued that TV3 could have minimised the liquor promotion by either not interviewing Mr Border while he wore the visor or by using camera angles which excluded the logo. She said that the latter had occurred during Television New Zealand's interview with Mr Border on the same occasion. She added:



I am concerned about TV3's attitude that the broadcaster has little control over sponsorship advertising in relation to apparel and believe their responsibilities under the Codes of Broadcasting Practice must be adhered to.

She also stated that standard 27(c) relating to the minimisation of incidental liquor promotion during interviews was more applicable than standard 27(b) under which TV3 had assessed the complaint.

TV3's Response to the Broadcasting Standards Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 13 July 1993 and TV3 in its reply dated 30 July, did not wish to comment further.

Health Action-Nelson's Final Comment to the Authority

TV3's reply was referred to the complainant and Ms McPherson in a fax dated 13 August advised that she had no further comment to make.

