

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 125/93

Dated the 6th day of October 1993

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
CANTERBURY TELEVISION
LIMITED

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

DECISION

Introduction

Welcome to Canterbury, a programme broadcast by Canterbury Television Ltd at 9.00am on 18 February 1993, provided tourist information about some aspects of life in Canterbury and referred to a number of local business enterprises.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained that the references to a number of named vineyards and to a wine bar were liquor advertisements which were broadcast in contravention to the requirement that liquor advertisements be confined to the hours of 9.00pm - 6.00am. Alternatively, he said that they breached the prohibition on the contrived incidental promotion of liquor.

Pointing to the rapid development of the wine industry in Canterbury and the discussion about wine in the programme with an acknowledged oenological authority, CTV said the individual vineyards were referred to as suggested places of interest for tourists to visit. Arguing that the Code was designed to deal with a different situation and that the broadcast did not amount to the contrived incidental promotion of liquor, CTV maintained that the standards were not contravened. Dissatisfied with the decision, Mr Turner on GOAL'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.

In Decision No: 90/93 the Authority declined to uphold a complaint from GOAL that CTV's broadcast of the programme *Welcome to Canterbury* on 18 February 1993 breached standard 27(a) of the Television Code of Broadcasting Practice. Upon receipt of the Decision, the Secretary of GOAL, Mr Turner, expressed the opinion on the basis of the references to the programme that the tape supplied by CTV to the Authority was not a copy of the programme about which GOAL had complained. The Authority checked with CTV which confirmed that GOAL was correct and, in the circumstances, the Authority decided to re-open its investigation of the complaint.

The Authority considers that it is appropriate in these unusual circumstances to note the part of the programme to which GOAL objected. *Welcome to Canterbury* was a programme broadcast by CTV which it described as:

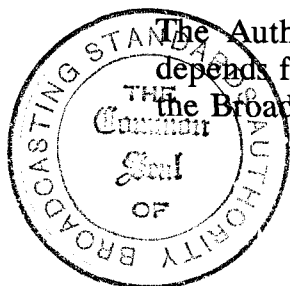
... a comprehensive survey of the Canterbury region directed at providing tourist information.

Included in the programme which lasted nearly an hour was a section in which the presenter, George Balani, was shown talking in a wine bar with oenologist, Professor Don Beaven. Five vineyards were referred to and some bottles of wine from each were displayed. At the end of each segment on the specific vineyard, its name and address were included in a caption. Finally, the presenter advised that if people were not able to visit the vineyard, the wines from each were available in Annie's Wine Bar at the Arts Centre in Christchurch, the place in which the discussion had just taken place.

Mr Cliff Turner of GOAL complained that the item breached Rule C of the Schedule of the Liquor Advertising Rules for Radio and Television. Assuming that the broadcasts were liquor advertisements, Mr Turner pointed out that Rule C prohibits the broadcast of such advertisements before 9.00pm or after 6.00am. Alternatively, he added, if the references to the vineyard were not advertisements, they breached standard 27(a) of the Television Code of Broadcasting Practice which 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.

The Authority would note that whether any programme is a liquor advertisement depends first on whether it falls within the definition of an "advertising programme" in the Broadcasting Act 1989 (defined as a programme which is paid for either in money



or kind) and secondly whether it falls within the definition of "Liquor Advertising" as defined in the Code for Advertising Alcoholic Beverages. Furthermore, the Authority would record that this latter definition in the Code has now been replaced (as from 1 April this year). Nevertheless, the following definition, extant at the time of the broadcast, was the one which the Authority was required to apply. It read:

"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 Advertisements" has a corresponding meaning. This definition does not include "Sponsorship Advertising" as defined herein.

The first question for the Authority was whether the aspects of the broadcast complained about (the references to the vineyards) were advertisements. Since CTV acknowledged that the vineyards had paid to be included in the programme, the Authority decided that they were "advertising programmes" as defined in the Act. The Authority will return later to the complaint about the wine bar featured.

In dealing with the second question - whether the vineyard promotions were liquor advertisements - CTV argued that they fell within the exception allowed in the definition. The definition, CTV argued, did not apply if the broadcast was set in premises licensed to sell liquor. As the references to the wine makers were made while the presenter and his guest were seated in a wine bar, they were thus excluded from the definition of liquor advertising. Mr Turner on GOAL's behalf described CTV's interpretation of the requirement as creative as it allowed liquor advertisements set on licensed premises to ignore all the prohibitions about, for example, the use of sporting heroes or the display of aggressive behaviour.

The Authority would note, first, that the quoted (and now outdated) definition of "liquor advertising" above was not very clear. It would also note that the definition, although approved by it, was one which was drafted by the Advertising Standards Authority (ASA). While it is likely that the definition drafted by the ASA was designed to cover some type of advertising which occurred in the past, the Broadcasting Standards Authority's task is to interpret the standard in relation to this complaint.

In doing so, the Authority accepted CTV's interpretation. Quite explicitly, the definition states that advertisements made on premises licensed to sell liquor are not liquor advertisements. The Authority would also accept Mr Turner's thoughtful point that this interpretation could open the floodgates and allow liquor advertisements to include other matters specifically excluded by the rules (eg as GOAL observed, the use of aggressive or macho themes). If that outcome was a possible consequence of the interpretation adopted, the Authority would have considered asking the ASA to amend its provisions. However, the Authority is pleased to report that this eventuality will not occur. As noted above, the definition of a liquor advertisement was revised by the ASA and, from 1 April this year, has read:

"Liquor advertisement" means an advertisement promoting liquor by product, brand or outlet where payment is made or received by any party but does not



include sponsorship advertisements.

Pursuant to that revised definition, the vineyard promotions on the CTV broadcast would appear to be liquor advertisements which would breach the rules about allowable hours for the broadcast of such advertisements.

With reference to the promotion of the wine bar, CTV said that it had not been paid for but did not record whether some other kind of consideration had been made. If it had, as the promotion was set on its premises, it would have been included in the same exception which applied to vineyards. As the wine bar had not made any sort of payment, the Authority was unable to accept that the programme was "contrived" in contravention of standard 27(a). In a programme designed to promote tourist activities, it was yet another feature displaying local facilities.

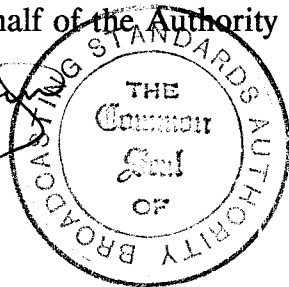
In summary, the Authority concluded that those aspects of the programme, which were paid for by a specific vineyard and which promoted its product, were not "liquor advertising" as they were set in the premises of an establishment licensed to sell wine. That conclusion also applied to the wine bar promotion should it have been paid for in some way and, if not, as the Authority accepted that it was not contrived, it was not in breach of standard 27(a). The Authority would report that as the definition under which the ruling was made was replaced in April this year, it has not created a possible "loophole" to the liquor advertising requirements.

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

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



6 October 1993

Appendix

GOAL's Complaint to Canterbury Television Limited

In a letter dated 8 March 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Canterbury Television Ltd about the programme *Welcome to Canterbury* broadcast by CTV at 9.00am on 18 February.

Mr Turner noted that the programme included a discussion about wine between the programme's host (George Balani) and an expert (Don Beaven), reference to vineyards by name accompanied by close-up shots of labels on wine bottles and, during the programme, viewers were urged to visit a named wine bar.

Expressing the belief that the references to the five named companies and the named wine bar were paid for, Mr Turner said they were thus liquor advertisements. However, as liquor advertising was not permitted other than between 9.00pm - 6.00am, the broadcast breached the rules relating to alcohol advertising. On the other hand, if the references to the wine businesses were not advertisements, Mr Turner said that they breached the requirement in another rule that broadcasters could not be part of an arrangement whereby the incidental promotion of liquor was a contrived part of a programme.

CTV's Response to the Formal Complaint

CTV advised GOAL of its decision on the complaint in a letter dated 30 May 1993.

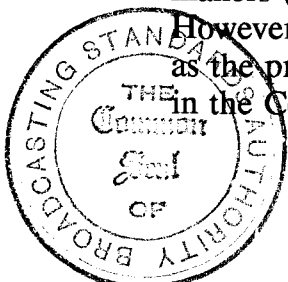
It began by explaining that the programme, *Welcome to Canterbury*, provided tourist information by exhibiting some aspects of Canterbury life and by referring to a number of local enterprises. Pointing to the rapid development of the wine industry in the province, CTV said that it had become an activity of considerable interest to visitors. It added:

It should be stressed that the exposure, which is given to the individual wines mentioned in the "Welcome to Canterbury" programme, is only incidental to an educated description of the Province, as a wine growing region of international stature.

Following a discussion with an acknowledged oenological authority, Professor Don Beaven, the programme had referred to individual vineyards as places of interest for visitors. It could not, CTV added, be compared with general brand liquor advertising.

Dealing with the specific aspects of the complaint, CTV acknowledged that the wine makers (but not the named wine bars) paid to participate in the programme.

However, it did not amount to a breach of the time limits for liquor advertisements as the programme did not constitute "liquor advertising". The definition of that term in the Code for Advertising Alcoholic Beverages reads:



"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 the Code. "Liquor Advertisements" has a corresponding meaning.

CTV focussed on the phrase "other than in premises licensed to sell liquor" and while questioning whether the programme did in fact promote liquor, pointed out that the sale was promoted from the premises themselves. Further:

The whereabouts of each of the wine companies mentioned were clearly described in the programme both by statement and by diagram. Given that the premises were clearly specified, it is plain that the programme did not constitute a liquor advertisement.

As for the other aspect of the complaint that the programme breached the standard which prohibits a broadcaster being a party to an arrangement for contrived liquor promotion, CTV denied that any of the segments involving wine were contrived. That standard, CTV continued, was not applicable to the programme *Welcome to Canterbury*.

GOAL'S Complaint to the Broadcasting Standards Authority

Dissatisfied with CTV's decision, Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989. As for the reason for the dissatisfaction, Mr Turner wrote:

The broadcaster appears to be unable to understand the definition of an advertising programme which appears in the Broadcasting Act and the definition of liquor advertising which appears in the Code for Advertising Alcoholic Beverages.

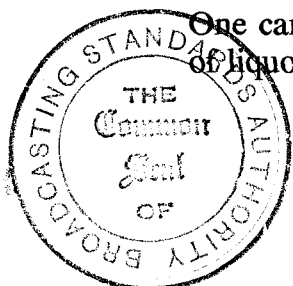
CTV's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 7 June 1993 and CTV, in its response dated 25 June, enclosed a copy of its 30 May letter to GOAL and said that it did not wish to comment further.

GOAL's Final Comment to the Authority

When asked if GOAL wished to comment further, Mr Turner remarked:

One can only admire the creative way in which CTV interprets the definition of liquor advertising.



Further Correspondence

On receipt of Decision No: 90/93, in a letter dated 5 August 1993 Mr Turner wrote to the Authority pointing to some inconsistencies between the number of vineyards mentioned in his complaint and the number of vineyards mentioned in the decision. Further, Professor Beaven was shown on the programme about which he had complained while he was not referred to in the decision.

Being of the opinion that CTV had supplied the Authority with an incorrect tape, he argued that the Authority's duty was to re-open the complaint. He also sent the Authority a copy of a letter that he had sent to the Minister of Broadcasting in which he maintained that the Authority should supply complainants with a copy of the relevant tape received from broadcasters. This issue is now with the Ombudsman.

At the Authority's request, on 11 August 1993 CTV provided it with a copy of the tape of the programme *Welcome to Canterbury* which had been broadcast in February 1993 and added its apologies for any inconvenience caused.

When the Authority studied the tape now provided by CTV, it was apparent that it was different from the tape provided on 25 June and on which the Authority had reached its decision recorded as No: 90/93. GOAL also provided the Authority with a copy of the tape of the programme on what it had based its complaint which confirmed the inaccuracy of the 25 June tape supplied by CTV to the Authority. The Authority agreed with GOAL that its appropriate action was to reopen the complaint and, on 26 August, advised the parties accordingly and requested any further comments they might want to bring to the Authority's attention..

GOAL's Comment on Decision No: 90/93

In a letter dated 30 August 1993, Mr Turner on GOAL's behalf dealt first with CTV's defence that broadcasts from licensed premises were allowed to contain liquor promotion. He stated:

My belief is that that the exemption for licensed premises in the definition of liquor advertising applied to advertising material displayed in such premises.

He also argued that the important consideration was not where the promotion was filmed but where it will be seen. Pointing to the fact that the discussion about vineyards which took place in a wine bar had occurred when only the host and expert were present, Mr Turner argued that:

... it is more accurate to say that what took place in the wine bar was the preparation of a promotion to be made throughout CTV's viewing area.

According to the Authority's interpretation, he added, a beer advertisement could be made in a school in which sporting heroes wore extensive signs promoting that beer. After pointing to some other examples which could follow from the Authority's ruling,



he concluded:

Can liquor advertisers, in this case the five vineyards, be exempted from the provisions of the Code merely because the promotion of their products originated in licensed premises?

CTV's Response to the Authority

Although asked on two occasions and supplied with a copy of GOAL's 30 August response on the second, CTV did not respond to the Authority's request whether it wished to add anything to its previous submissions now that the Authority had re-opened the complaint.

