

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 157/93

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Dated the 18th day of November 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

GROUP OPPOSED TO
ADVERTISING OF LIQUOR
of Hamilton (2 complaints)

Broadcaster
TV3 NETWORK SERVICES
LIMITED

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

DECISION

Summary

Aussie Big League was the name of the programmes broadcast by TV3 between 9.30 - 10.30pm on 27 July and 24 August 1993. The second programme included an interview with Dean Bell whose appointment as the captain of the Auckland Warriors rugby league team had just been announced.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to TV3 Network Services Ltd that words promoting "DB Bitter" beer were on the studio backdrop behind the programme presenter. Such backdrops containing incidental liquor promotion, he continued, breached standard 14.b of the ASA Code for Advertising Liquor (now standard A3.b of the Programme Standards for the Promotion of Liquor). He also complained that the display by Dean Bell of an Auckland Warriors' jersey bearing the words "DB Bitter" was contrived and was thus both a breach of the ASA Code and the Voluntary Sports Code.

Maintaining that the standard dealing with the incidental promotion of liquor did not apply on this occasion as the backdrop in question specifically recognised the programme's sponsor, TV3 declined to uphold the complaint about the backdrop. It also



declined to uphold the aspect of the complaint which referred to the display of the jersey by Dean Bell but accepted that the broadcast of the sponsorship logo on the backdrop had not been brief as required by the standards.

Dissatisfied with TV3's decisions, on GOAL's behalf Mr Turner referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

For the reasons given below, the Authority upheld the complaints that the display of the backdrop breached the requirement to minimise the incidental promotion of liquor but did not uphold the complaint that the display of the jersey by Dean Bell was contrived or in breach of the Voluntary Sports Code.

Decision

The members of the Authority have viewed both programmes complained about and have read the correspondence (summarised in the Appendices). As is its practice, the Authority has determined the complaints without a formal hearing.

Aussie Big League was the name of a programme regularly broadcast by TV3 during the rugby league season. The presenter on the programmes complained about sat in front of a backdrop which showed a stylised league player and contained the words "DB Bitter".

Mr Turner, Secretary of the Group Opposed to Advertising of Liquor (GOAL), complained to TV3 that the appearance of the words "DB Bitter" on the backdrop during the programme broadcast on 27 July breached (renumbered) standard A3.b in the (renamed) Programme Standards for the Promotion of Liquor. The standard reads:

- A3 Broadcasters will ensure that the **incidental promotion of liquor** is minimised and in particular:
- b. Will ensure that backdrops and props for any in-house studio programme do not carry liquor promotions (not applicable to radio)

Mr Turner made a similar complaint about the *Aussie Big League* programme broadcast on 24 August. That programme included an interview with Dean Bell who had just been appointed captain of the Auckland Warriors rugby league team. Dean Bell was interviewed while in a studio in London and, during the interview, he held up an Auckland Warriors' jersey on which the words "DB Bitter" were depicted. Mr Turner alleged that the display of the jersey breached two provisions in the standards. First, as the display was contrived, it breached standard A3.a which provides:

- A3 Broadcasters will ensure that the **incidental promotion of liquor** is minimised and in particular:



Will not be a party to any contract or arrangement where incidental liquor promotion is a contrived part of the programme.

Secondly, Mr Turner alleged, it breached rule 1.4 of the Voluntary Sports Code for Liquor Advertising and Promotion on Television which states:

1.4 Wearing of Apparel on Television

- 1.4.1 A sponsored athlete may wear casual official team apparel on an event-related television interview which is being carried out as part of the athlete's official duties. Athletes must not contrive to add extras (non competition wear) in an interview situation.

Branded headwear is not acceptable in off the field interviews.

- 1.4.2 It is not acceptable for athletes to wear official team apparel - competition, practice or casual - on special programmes, game shows, appearances or interviews other than those regarded as official team duties.

The breach of rule 1.4, Mr Turner continued, amounted to a breach of the Programme Standards in view of the following provision in standard A3.d.

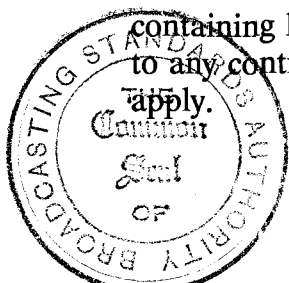
- A3 Broadcasters will ensure that the incidental promotion of liquor is minimised and in particular:**

- d. Will not broadcast anything which is in breach of section 1, relating to incidental promotion and saturation, of the *Voluntary Sports Code for Liquor Advertising and Promotion on Television*.

The Authority also records that in the complaint about the programme on 24 August, Mr Turner complained in addition, under the now replaced standard 13.b of the ASA Code for Liquor Advertising, about the length of time the backdrops were displayed - more than 20 seconds on each of the first two occasions. That length of display, he claimed, breached the requirement that the appearance of sponsorship credits be brief. TV3 upheld that aspect of the complaint which, under the rewritten standards, is now a matter for the Advertising Standards Complaints Board rather than the Broadcasting Standards Authority.

In response to the backdrop aspect of the complaint under standard A3.b, TV3 said that it was apparent from the verbal and visual references during the programme that "DB Bitter" was the programme's sponsor. The sponsorship credits, in addition to the voice-over, included an electronically generated graphic containing the words "DB Bitter League" which was visible as part of the backdrop when the presenter spoke. Standard A3.b referred to the "incidental promotion of liquor" and, as the backdrop was specific recognition of the programme's sponsor, TV3 maintained that the prohibition on incidental liquor promotion on backdrops did not apply.

As for the aspect of the complaint under A3.a that Dean Bell produced a jersey containing liquor promotion in a contrived way, TV3 argued that as it was not a party to any contract or arrangement involving the display of the jersey, the standard did not



With regard to the alleged breach of the Voluntary Sports Code, TV3 stated that standard 1.4 had not been contravened as the interview was an official team duty for Dean Bell and official team apparel was acceptable on such occasions.

On GOAL's behalf in response to TV3, Mr Turner disagreed that intentional promotion of liquor on a backdrop overruled the prohibition on incidental promotion in that situation. Further, he argued that TV3 had become a party to the arrangement for contrived liquor promotion by broadcasting the interview with Dean Bell and, as he had been advised that the Auckland Warriors did not legally exist, he asked how could anyone be called the team's captain. This last point was refuted by TV3 when it said it had checked with Auckland Rugby League that the Warriors was an acknowledged team.

The Authority first assessed the aspect of the complaint which alleged that the appearance of the words "DB Bitter" on the backdrop during an in-house studio broadcast breached standard A3.b. Pointing out that it was irrelevant whether the words and display were electronically generated or real, the Authority decided that TV3's interpretation was incorrect. As "incidental" did not mean "accidental", as TV3 implied, it could not be contrasted with "deliberate" and the Authority upheld that aspect of both complaints. "Incidental" liquor promotion on a studio backdrop, it would add for the sake of clarification, is prohibited whether or not the promotion is accidental or deliberate.

There were two aspects to the complaint about Dean Bell's display of an Auckland Warriors' jersey. The first was the A3.a complaint that TV3 was a party to a contract or arrangement whereby incidental liquor promotion was a contrived part of the programme. Because of its interest to viewers of the programme, the Authority did not accept that the display was contrived and it declined to uphold that aspect of the complaint. A majority of the Authority was also reluctant to accept the argument that a broadcaster, by broadcasting an item over which it has little control, thus became a party to any arrangement or contract involving contrived incidental liquor promotion. The minority, on the other hand, considered that as the broadcaster made use of a recorded interview, it had control over the situation. However, having concluded that the display was not contrived on this occasion, a conclusive decision on the latter point was unnecessary. The issue of control is addressed further in Decision No: 149/93.

The second aspect of the complaint was that the display breached the Voluntary Sports Code. The standard cited by GOAL, however, was inapplicable as it relates only to the wearing of apparel on television.

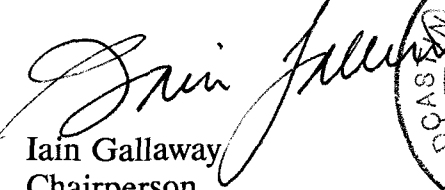
For the reasons set forth above, the Authority upholds the complaints that the broadcasts by TV3 Network Services Ltd of the programme *Aussie Big League* on 27 July and 24 August 1993 breached standard A3.b of the Programme Standards for the Promotion of Liquor in that the broadcaster, when screening the presenter in the studio, did not ensure that the backdrops did not carry incidental liquor promotion.

The Authority declines to uphold any other aspects of the complaints.



Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act 1989. On the basis, first, that the broadcaster appeared to believe that the offending broadcast did not breach the standards, and secondly, that similar broadcasts in the future are unlikely as in addition to this ruling the broadcaster accepted that the broadcasts contravened the provision about the length of time that a logo could be displayed as a sponsorship credit, the Authority is prepared to give the broadcaster the benefit of the doubt and not impose an order on this occasion.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 November 1993

Appendix I

GOAL's Complaint to TV3 Network Services Limited

In a letter dated 29 July 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TV3 Network Services Ltd about the programme *Aussie Big League* broadcast between 9.30 - 10.30pm on 27 July.

Pointing out that the words "DB Bitter" were on the studio backdrop when the presenter spoke - which was for more than 50 seconds on one occasion - Mr Turner argued that the appearances of the words promoting liquor on the backdrop breached standard 14.b of the ASA Code for Advertising Liquor.

(The Code under which the complaint was laid has been renamed as the Programme Standards for the Promotion of Liquor and have been renumbered after the enactment of the Broadcasting Amendment Act 1993. The new name and number has been used in the Authority's decision.)

TV3's Response to the Formal Complaint

TV3 advised GOAL of its Complaints Committee's decision in a letter dated 30 August 1993.

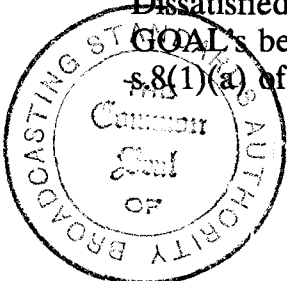
It noted that "DB Bitter" was the programme's sponsor as was apparent by the opening graphics and voice-over, and from the references made by the presenter. In addition, it agreed that an electronically created graphic which included the words "DB Bitter League" was visible as part of the backdrop while the presenter spoke.

Referring to the wording of standard 14.b which requires that the incidental promotion of liquor be minimised and, in particular, that backdrops for in-house studio programmes do not carry liquor promotions, TV3 argued that the logo was not "incidental promotion" but in fact recognition of specific programme sponsorship. Consequently, the standard had not been breached.

TV3 then considered whether the broadcast complied with standards 11, 12 and 13 of the Code and while declining to reach a formal decision, acknowledged that the broadcast might have breached the standard which requires only a "brief" mention of the sponsoring company.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's response, in a letter dated 2 September 1993 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 the standard's intention to minimise the incidental promotion of alcohol was clear, Mr Turner wrote, TV3's explanation was not acceptable.

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 5 September 1993 and TV3's reply, 16 September.

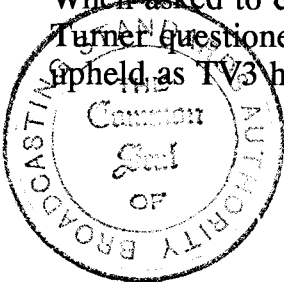
TV3 explained its reasons for declining the complaint in the following way. First, although the standard referred to a background or a prop, it could apply equally to the modern equivalent - the electronically created image.

Secondly, two independent images were created electronically for *Aussie Big League*. They were a stylised image of a rugby league player with a ball and, separately, the words "DB Bitter League" to form a sponsorship logo.

Whereas TV3's Complaints Committee believed that the broadcast of a sponsorship logo did not comply with the requirements for brevity in standards 12.f or 13.b, it did not breach the requirement in standard 14.b that the "incidental promotion" of liquor be minimised. Brevity, TV3 added, "is in the order of 3 - 5 seconds".

GOAL's Final Comment to the Broadcasting Standards Authority

When asked to comment on TV3's reply, in a letter dated 24 September 1993 Mr Turner questioned whether or not the standard 14.b aspect of the complaint had been upheld, as TV3 had given advice which was contradictory on the matter.



Appendix II

GOAL's Complaint to TV3 Network Services Limited

In a letter dated 25 August 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TV3 Network Services Ltd about the programme *Aussie Big League* broadcast between 9.30 - 10.30pm on 24 August.

He listed four aspects of the complaint which, he said, breached various standards in the ASA Code for Advertising Liquor.

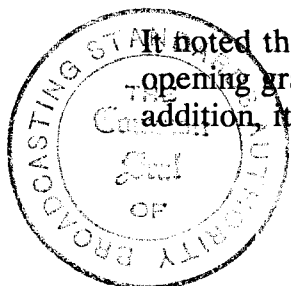
- 1) The backdrop behind the presenter contained incidental liquor promotion in contravention of standard 14.b which requires that the incidental promotion of liquor be minimised.
- 2) The first two appearances of the backdrops lasted for more than 20 seconds each which breached the requirement in standard 13.b that the appearances of sponsorship credits be brief.
- 3) During the interview with Dean Bell, he held up a jersey bearing the words "DB Bitter" and as that display was arranged or "contrived", it breached standard 14.a as broadcasters were not allowed to be a party to an arrangement where incidental liquor advertising was a contrived part of a programme.
- 4) Rule 1.4 of the Voluntary Sports Code for Liquor Advertising and Promotion on Television states that it is unacceptable for athletes to wear official team apparel during television interviews other than part of official duties. Under standard 14.d of the ASA Code a breach of the Voluntary Code is also in contravention of the Code for Advertising Liquor as had occurred on this occasion.

(The standards under which the complaint was laid have been renamed as the Programme Standards for the Promotion of Liquor and have been renumbered following the enactment of the Broadcasting Amendment Act 1993. The new name and numbers have been used in the Authority's decision.)

TV3's Response to the Formal Complaint

TV3 advised GOAL of its Complaints Committee's decision in a letter dated 30 August 1993.

It noted that "DB Bitter" was the programme's sponsor as was apparent by the opening graphics and voice-over, and from the references made by the presenter. In addition, it agreed that an electronically created graphic which included the words



"DB Bitter League" was visible as part of the backdrop while the presenter spoke.

Referring to the wording of standard 14.b which requires that the incidental promotion of liquor be minimised and, in particular, that backdrops for in-house studio programmes do not carry liquor promotions, TV3 argued that the logo was not "incidental promotion" but in fact recognition of specific programme sponsorship. Consequently, the standard had not been breached.

TV3 then considered whether the broadcast complied with standards 11, 12 and 13 of the Code and acknowledged that the broadcast seemed to have breached the standard which requires only a "brief" mention of the sponsoring company.

As TV3 was not a party to any arrangement for Dean Bell to display the competition jersey in which the team will play, it continued, the broadcast was not contrived. The provision in the Voluntary Code had not been breached, TV3 added, as Dean Bell's appearance was an official team duty where official team apparel may be worn.

TV3 concluded:

The producer has been re-acquainted with all the rules and codes pertaining to the promotion of liquor by any means. We are confident there shall be full adherence from this point onwards.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's response, in a letter dated 2 September 1993 Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

First, Mr Turner wrote, while TV3 seemed to accept implicitly that the brevity requirement in standard 13.b had been breached, there was no explicit acknowledgement of that point.

Secondly, Mr Turner stated that as the intention of standard 14.b to minimise the incidental promotion of alcohol was clear, TV3's explanation that the broadcast was intentional was unacceptable.

Thirdly, with regard to TV3's denial of being a party to any arrangement, GOAL argued that TV3 had become a party by screening the item.

As for TV3's point that Dean Bell was performing an official team duty, Mr Turner referred to the advice that he had received from the Advertising Standards Complaints Board that the Auckland Warriors did not yet exist and asked how could Dean Bell be called the captain. Furthermore, Mr Turner maintained that even if Dean Bell was acting in an official capacity, the manner in which he produced the jersey was unacceptable.



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 5 September 1993 and TV3's response, 16 September.

Arguing that it thought its finding was clear, TV3 said it would, in the future, nevertheless, use the word "upheld", adding "we apologise to the complainant for not proffering that morsel".

TV3 explained its reasons for declining the complaint in the following way. First, although the standard referred to a background or a prop, it could apply equally to the modern equivalent - the electronically created image.

Secondly, two independent images were created electronically for *Aussie Big League*. They were a stylised image of a rugby league player with a ball and, separately, the words "DB Bitter League" to form a sponsorship logo.

Whereas TV3's Complaints Committee believed that the broadcast of a sponsorship logo did not comply with the requirements for brevity in standards 12.f or 13.b, it did not breach the requirement in standard 14.b that the "incidental promotion" of liquor be minimised. Brevity, TV3 added, "is in the order of 3 - 5 seconds".

As for whether or not the Auckland Warriors existed, TV3 said "they do" - adding that it had checked with Auckland Rugby League. Mr Bell was the captain with attendant responsibilities.

GOAL's Final Comment to the Authority

When asked to comment on TV3's reply, in a letter dated 24 September Mr Turner on GOAL's behalf observed that TV3's sarcasm was at the expense of clarity.

It seemed that TV3 upheld the complaint about the length of time the backdrops were portrayed but maintained that the backdrops themselves did not contravene standard 14.b. Mr Turner disagreed with the latter conclusion. Moreover, while accepting with gratitude TV3's evidence about the existence of the Auckland Warriors, he argued that the standard 14.a and 14.b complaints had not been addressed.

