

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 45/93

Dated the 19th day of April 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
TELEVISION NEW ZEALAND
LIMITED

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

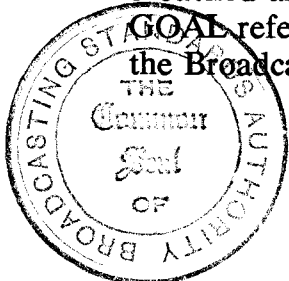
DECISION

Introduction

The expected result of the forthcoming rugby league game between Auckland and the Manly Sea Eagles was discussed by the coach of the Auckland team while shown walking towards the camera on TV1's *Moro Sports Extra* programme broadcast at 7.30pm on 25 January 1993. The coach was wearing a t-shirt which carried the Lion Red logo and a large sign bearing the words "Lion Red" was clearly visible behind him.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to Television New Zealand Ltd that the shot of the sign behind the coach was contrived advertising in contravention of the broadcasting standards. Moreover, the focus on both the sign and the t-shirt also breached the standards.

Pointing out, first, that Moro and not Lion Red was the sponsor of its programme, and secondly, that it was not involved in the sponsorship arrangement between the Auckland Rugby League team and Lion Red, TVNZ said that the standards had not been breached and it declined to uphold the complaint. Dissatisfied with TVNZ's decision, GOAL 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 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.

On GOAL's behalf, Mr Turner as Secretary wrote to TVNZ about an item shown on the *Moro Sports Extra* programme at 7.30pm on 25 January when, during a discussion about a forthcoming rugby league game, the coach of the Auckland team while at a sports ground was depicted walking towards the camera. Mr Turner complained that as the coach was wearing a t-shirt which carried the Lion Red logo and as a large sign bearing the words "Lion Red" was clearly visible behind him, the item breached the requirements about minimising the incidental promotion of liquor contained in standard 27(a) and (b) of the Television Code of Broadcasting Practice. As that standard was breached, he continued, the item was deemed to be a liquor advertisement which breached the standard prohibiting such advertisements before 9.00pm.

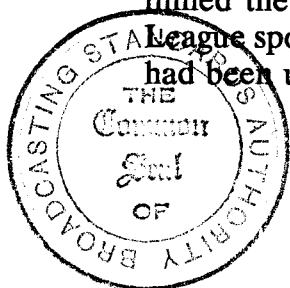
TVNZ assessed the complaint under the standard nominated by GOAL which reads:

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.
 - (b) Will not focus during any programme on any particular advertising signage, logo or any other sound or visual effect which promotes liquor.

Dealing with standard 27(a) first, TVNZ advised GOAL that as "Moro" was the programme's sponsor, not "Lion Red", it was not interested in putting references to Lion Red on the screen. It denied that the shot which was broadcast was contrived.

With reference to standard 27(b), TVNZ denied that the shot was "set-up". It pointed out that there were many Lion Red signs around the ground - as the sponsor of the team - and that players regularly wore shirts bearing the sponsor's logo. Noting that the broadcaster had little control over the situation and maintaining that the signs had not been focused on, TVNZ declined to uphold the complaint under standard 27(b).

When he referred the complaint to the Authority, among other matters Mr Turner requested an authoritative interpretation of the word "contrived" in standard 27(a) which TVNZ had suggested was a "deceitful practice". TVNZ added that the cameraman had filmed the coach while taking general footage of player activity at Carlaw Park - the League sports ground - and, as the commentary called for a visual of the coach, the shots had been used. TVNZ stated:



The camera operator on this occasion was simply filming what are known as general shots that can usefully be used with the commentary which links pieces of interview and actuality. These shots are not set up in any way but are filmed as players go about their normal activities.

Standard 27 (a) prohibits broadcasters from being a party to any arrangement or contract where contrived incidental liquor is broadcast. Thus, before considering the meaning of "contrived", there has to be some evidence of a contract or arrangement in which the broadcaster agrees to broadcasting the incidental promotion of liquor. Taking into account that Moro, a chocolate bar manufacturer not a liquor company, was the programme's sponsor, the Authority accepted TVNZ's assurance that it had not been a party to any arrangement for the incidental promotion of liquor.

In regard to the standard 27(b) aspect of the complaint, the Authority accepted that the advertising signage depicted promoted liquor and, consequently, it was required to decide whether the broadcast "focused" on the logo on the t-shirt or on the ground sign. In assessing that question, the Authority took into account the provision with which standard 27 concludes and which states:

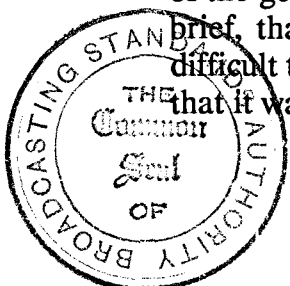
It is recognised that incidental promotion occurs regularly in programmes where broadcasters have little control over the situation.

As the situation where the shot was taken was one where the broadcaster had little control, the standard thus requires the Authority to acknowledge acceptable incidental promotion provided that the signage is not focused on. As is often the case on such occasions, focusing on the person who is the subject of the item inevitably means that relatively close surroundings also fall within the field of focus.

The Authority decided to examine the two pieces of incidental advertising separately - the logo on the t-shirt and the sign on the ground. It accepted TVNZ's point that practice clothing supplied by sponsors and worn by sportspeople frequently includes the sponsor's logo. Furthermore, the logo on such clothing might be considerably larger than that which is allowed on match clothing. The size of the logo is balanced by the fact that practice clothing will be seen by a relatively small number of people as spectators in person or on television while the match clothing will probably be seen by a much larger number of people over a much longer period.

The standard poses a dilemma for broadcasters. Unless there is an arrangement between the sponsor and the broadcaster - to which other aspects of standard 27 apply - the broadcaster will usually, when carrying on-location material, include incidental liquor promotion. The problem is addressed by the prohibition in standard 27(b) on focusing on that material.

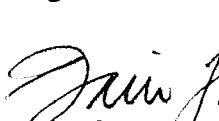
In reaching a decision, the Authority took into account the fact that the visual was part of the general footage taken by TVNZ, that the portrayal of the t-shirt and the sign was brief, that it was difficult to see exactly what was pictured on the t-shirt, that it was difficult to avoid the t-shirt, that the ground sign was not in the centre of the picture, and that it was difficult to avoid the background signs while focusing on the relevant person.



Although a conclusion on each complaint about incidental liquor advertising will inevitably involve a careful assessment of the particular facts of broadcast and that, as yet, there has been an insufficient number of complaints for general rules to be devised, the Authority decided that the broadcast of the t-shirt and the background sign on this occasion did not breach standard 27(b). However, the authority added that it was at the limit of what is acceptable incidental advertising. Nevertheless, the brevity of the display of the incidental advertising on this occasion, the Authority decided, enabled TVNZ's argument that standard 27(b) had not been contravened to be acceptable.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



19 April 1993

Appendix

GOAL's Complaint to Television New Zealand Limited

In a letter dated 26 January 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about an item on TV1's *Moro Sports Extra* broadcast at 7.30pm on 25 January.

Mr Turner said that during an item about rugby league, the programme:

showed a man walking towards the camera ... wearing Lion Red advertising on his chest and a large sign bearing the words Lion Red was clearly visible behind him.

It would, he continued, have been a simple matter to ask the man to move so that the sign did not intrude into the picture.

Because of the focus on the clothing and the sign, Mr Turner said that the item breached standard 27(b) of the Television Code of Broadcasting Practice. In addition, he considered that the showing of the background sign was "contrived" in breach of standard 27(a).

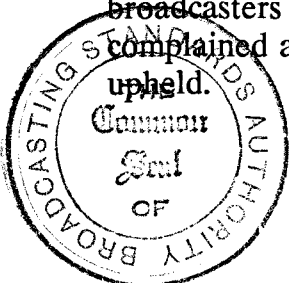
Because of the breaches, he concluded, the item had to be regarded as liquor advertising and, consequently, it breached the standard which prohibits liquor advertisements on television before 9.00pm.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 10 February 1993 when it reported that the complaint had been assessed under standard 27(a) and (b) of the Television Code.

Pointing out that *Moro* was the programme's exclusive sponsor, TVNZ said that it had no interest in putting Lion Red on the screen. TVNZ, it continued, was not part of the sponsorship contract between Lion Red and Auckland Rugby League. Moreover, the shot of the sign behind the man was not contrived and the standard 27(a) complaint was not upheld.

In regard to the standard 27(b) complaint, TVNZ said the shot was not "set up". Because of Lion Red's sponsorship, there were many of the sponsor's signs around the ground and the players regularly wore shirts bearing the sponsor's logo. Noting that standard 27 provided for the broadcast of incidental liquor promotion when broadcasters had little control of a situation, TVNZ maintained that the broadcast complained about was one such situation. That aspect of the complaint was also not



GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 11 February 1993 Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

First, Mr Turner wrote, he had referred the complaint to the Authority in order to get a ruling on the meaning of the word "contrived" in standard 27(a). Secondly, he argued that TVNZ had talked about "general player activity" while his complaint, which was not answered, focused on one shot of a man walking towards the camera.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 15 February 1993 and TVNZ's reply, 22 February.

TVNZ said that the shot complained about (to which it had referred in its reply to GOAL) focused on the Auckland Rugby League team's coach (Owen Wright) and his comment about the forthcoming game with Manly. It continued:

We deny that the inclusion of the shot was an act of contrivance (by definition "a deceitful practice"). The shot was included simply because the commentary called for some vision of Owen Wright, and this shot was found among the general footage of player activity filmed at Carlaw Park.

Mr Turner's insistence that the coach could have been asked to walk elsewhere betrays an ignorance of the matter in which such material is gathered. The camera operator on this occasion was simply filming what are known as general shots that can usefully be used with the commentary which links pieces of interview and actuality. These shots are not set up in any way but are filmed as players go about their normal activities.

TVNZ repeated that the programme was sponsored by Moro - a chocolate bar manufacturer - not a liquor company but that filming of players and the ground at Carlaw Park on occasions showed Lion Red logos. It was a situation over which TVNZ had no control.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 8 March 1993 Mr Turner on GOAL's behalf disagreed that "contrived" necessarily involved a deceitful connotation. Referring to the Collins dictionary, he said that "contrived" involved planning and an absence of spontaneity. That applied to the item complained about as the coach's walk towards the camera was obviously planned and lacked spontaneity. Moro's sponsorship, he added, was irrelevant.

