

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 48/93

Dated the 22nd 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
TV3 NETWORK SERVICES
LIMITED

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

DECISION

Introduction

Referring to a prize-winning beer brewed by Captain James Cook in Dusky Sound in 1773 to combat scurvy, an advertisement for Steinlager beer broadcast by TV3 at 11.59pm on 11 November 1992 stated that New Zealand beer had been winning awards for more than 200 years.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to TV3 Network Services Ltd, as the broadcaster, that the advertisement implied that beer had health giving properties contrary to the alcohol advertising standards. The advertisement, GOAL continued, also contained factual errors which misled viewers and, accordingly, also breached the standards.

Denying that the advertisement claimed that beer contained health giving qualities and maintaining that the events referred to were documented, TV3 declined to uphold the complaint. Dissatisfied with TV3'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 advertisement 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.

GOAL supplied the following transcript of an advertisement for Steinlager beer broadcast late in the evening of 11 November 1992.

New Zealand beer. It's been winning golds for more than 200 years.

Beer was first brewed in New Zealand in 1773 here in Dusky Sound and the brewer was none other than Captain James Cook. Cook knew the health giving properties of beer and he used it with so much success to combat scurvy it won him the gold medal from the Royal Society.

More than 200 years later all that's changed is that beer's got better. It still wins gold like Steinlager's win at Brewex, the world's most prestigious brewing competition.

GOAL complained to TV3 on a number of grounds about the broadcast. First, it said, the commercial claimed, in contravention of standard 1 of the Code for Advertising Alcoholic Beverages, that modern beer had health giving qualities. Secondly, GOAL continued, the advertisement breached the standards as it contained two errors of fact. As the main ingredients of Cook's beer were manuka and rimu, it was incorrect to maintain that modern beer was brewed in the same way. Further, the advertisement claimed that Cook won a gold medal for his beer while, to be accurate, it should have stated that he won the medal for a paper he presented to the Royal Society about the methods he used to keep his men healthy. GOAL observed:

Even if the beer was vile - and it probably was - Cook would still have won his gold medal.

Accordingly, GOAL said that the advertisement breached the following broadcasting standards. Standard 1 of the Code for Advertising Alcoholic Beverages reads:

1. Advertising shall not by use of illustration or copy, directly or by innuendo, contain any description, claim or comparison which is misleading about the product advertised, or about any other product, or suggest some special quality or property which cannot be sustained.

An unnumbered basic principle and standards 2 and 5 of the Advertising Code of Ethics provide:

No advertisement may be misleading or deceptive or likely to mislead or deceive the consumer.

Truthful Presentation - Advertisements must not contain any statement or



visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation ...

5. **Honesty** - Advertisements must be framed so as not to abuse the trust of the consumer or exploit his/her lack of experience or knowledge. ...

Finally, GOAL complained, it also breached standard 1 of the Television Code of Broadcasting Practice which requires programmes to be truthful and accurate on points of fact.

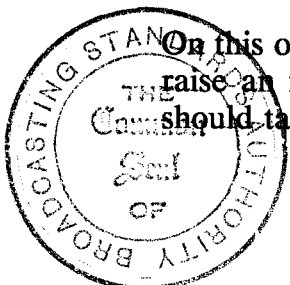
TV3 declined to uphold the complaint. Denying that the commercial could be interpreted as claiming or implying that modern beer had health giving qualities, TV3 said it was correct to report that beer had improved since Cook's time. Further, TV3 added, it did not suggest that Cook won an award for the quality of his brew but as a weapon against scurvy.

The Authority first examined GOAL's complaint that the advertisement implied that modern beer had health-giving qualities. There was some division of opinion as to whether the advertisement contained such an innuendo taking into account the emphasis given in the advertisement that Captain Cook's brew was used to maintain the health of his crew. However, when the reference to scurvy was taken into consideration together with the current widespread knowledge about nutrition, the Authority was unable to accept that the innuendo would have any credibility in the 1990s. Accordingly, the Authority decided that the advertisement was neither misleading nor did it make an unsustainable claim about beer contrary to standard 1 of the Code for Advertising Alcoholic Beverages or the basic principle of the Advertising Code of Ethics.

Turning to the alleged factual inaccuracies, the Authority first considered the aspect of the complaint that the advertisement claimed that the chief ingredients of modern beer were similar to the chief ingredients of Cook's beer. The Authority was unable to agree with GOAL that the advertisement claimed similar ingredients for Cook's beer and modern beer. Upon examining the advertisement, the Authority accepted that the claim was at a general level and that it equally referred to the brewing process. The Authority accepted that although parallels were drawn with Cook's beer, by claiming for whatever reason, that all that changed was that beer had "got better" the advertisement was not arguing that either the ingredients or process were unchanged.

The Authority believed that the alleged inaccuracy about the reason for Captain Cook's prize required more thorough consideration. As GOAL had done, the Authority interpreted the commercial to mean that Captain Cook's beer had won him a gold medal from the Royal Society. That point was inaccurate as Captain Cook's paper - not the beer - won the medal. Having reached that conclusion, the Authority then considered whether the inaccuracy amounted to a breach of the standards.

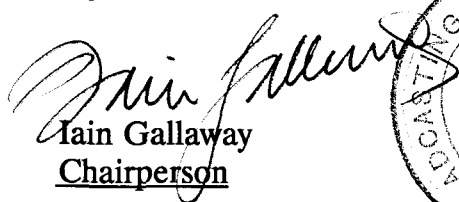
On this occasion, the Authority considered that, as that aspect of the complaint did not raise an issue of consequence which was relevant to the product being advertised, it should take into account the advertisement's general tenor. That involved considering



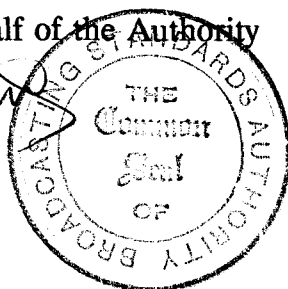
both the advertisement's light-heartedness and its historical context. The major claim was that Steinlager beer had medal winning qualities. That aspect was accurate but it was surrounded by an historical facade. The inaccuracy did not refer to the properties of modern beer - scurvy is not a current health issue - and the historical reference was unlikely to change the beer consumer's attitude when selecting a product. Accordingly, although the advertisement was not entirely accurate, the Authority decided that it was a minor technical point which did not justify a ruling that the broadcast breached the standards which prohibit inaccuracy.

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

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



22 April 1993

Appendix

GOAL's Complaint to TV3 Network Services Limited

In a letter dated 16 November 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TV3 Network Services Ltd about an advertisement for Steinlager beer broadcast by TV3 at 11.59pm on 11 November.

The advertisement stated that New Zealand beer had been winning awards since 1773 when a beer brewed by Captain James Cook in Dusky Sound to combat scurvy won a gold medal from the Royal Society. Currently, the advertisement continued, Steinlager beer won gold medals at Brewex, an international brewing competition.

By implying that both Captain Cook's beer and modern beer had health giving qualities, GOAL said the advertisement breached standard 1 of the Code for Advertising Alcoholic Beverages which prohibits unsubstantiated claims that alcohol has some special quality.

Further, the advertisement claimed that the respective beers were similar while, GOAL maintained, the main ingredients were vastly different. Moreover, the advertisement claimed that the beer won the gold medal whereas the medal was awarded for a paper Captain Cook contributed to the Royal Society in 1774 which discussed the means he used to keep his men healthy. GOAL wrote:

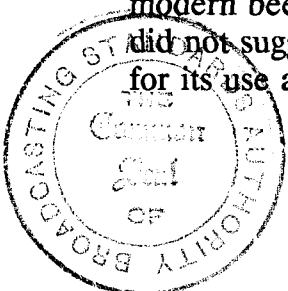
To suggest that he won a gold medal for the quality of his concoction of rimu and manuka is absurd. Even if the beer was vile - and it probably was - Cook would still have won his gold medal.

GOAL stated that these two errors of fact breached standards 2 and 5 of the Advertising Code of Ethics which prohibits advertisements which exploit a consumer's lack of knowledge, standard 1 of the Television Code of Broadcasting Practice requiring truthful and accurate programmes and the basic principle in the Advertising Code of Ethics which prohibits misleading or deceptive advertisements.

TV3's Response to the Formal Complaint

TV3 advised GOAL of its Complaints Committee's decision in a letter dated 25 January 1993.

It stated that it was a realistic claim to suggest that New Zealand beer had improved since Captain Cook's brew but denied that the advertisement claimed or implied that modern beer contained health giving qualities. TV3 also said that the advertisement did not suggest that Captain Cook won an award for the quality of his concoction but for its use as a weapon against scurvy.



Referring to a number of documented facts, TV3 denied that the advertisement was inaccurate or misleading and declined to uphold the complaint.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's decision, in a letter dated 29 January 1993 Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Referring to the advertisement's claim that Captain Cook's beer had health giving qualities followed by the words " ... all that's changed is that beer's got better ... ", GOAL argued that the advertisement claimed health-giving qualities for modern beer. Again referring to the text which said that beer has " ... been winning golds for more than 200 years ... ", GOAL said it was suggested that Captain Cook's beer won a gold medal.

GOAL concluded:

TV3 has not addressed the question of misleading advertising. To compare beer made from malted barley to a concoction of rimu and manuka shoots and leaves is without question misleading.

TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 1 February 1993 and TV3's reply, 8 February.

Although some of the ingredients of beer could be construed as health giving, TV3 denied that it was the advertisement's intention to make that claim. "If it was, there are far more direct ways of achieving it".

Pointing out that the gold medal won by Captain Cook was for neither the brew itself nor the neatness of his report, but for the contents of the report, TV3 denied that the advertisement was either misleading or inaccurate.

GOAL's Final Comment to the Authority

When asked to comment on TV3's response, in a letter dated 13 February 1993 Mr Turner on GOAL's behalf referred to the sentence in the commercial which maintained the health giving properties of Captain Cook's beer and insisted that it claimed similar qualities for modern beer.

He argued that TV3 acknowledged that the commercial was untruthful in claiming that the beer - not the paper - won the medal and in claiming that modern beer was made from manuka and rimu.

