

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 56/93

Dated the 3rd day of May 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

An advertisement for the New Zealand cricket team sponsored by DB Draught beer was broadcast during TV1's *Moro Sports Extra* programme between 7.30 - 8.00pm on 25 January 1993.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, pointed out to Television New Zealand Ltd that the "DB Draught" logo was seen on the players' clothing on a number of occasions. As sponsorship advertisements only allowed a brief mention of the sponsor's name or logo, GOAL said that the advertisement was in fact a liquor one which, as it featured heroes of the young, breached the liquor advertising standards.

Maintaining that the sponsorship message extolled the "Silver Fern Cap" and that the logos were seen only briefly and incidentally, TVNZ 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.

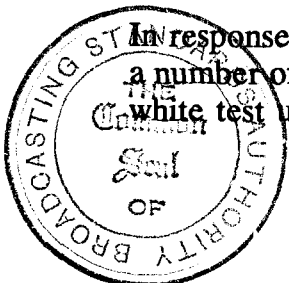
On GOAL's behalf, Mr Turner the Secretary complained to TVNZ about a DB sponsorship advertisement for cricket broadcast during the *Moro Sports Extra* programme between 7.30 - 8.00pm. In addition to the brief depiction of the DB logo together with a verbal acknowledgement at the end of the advertisement which the Rules clearly allow, the DB logo was seen on a number of occasions during the advertisement on the players' clothing worn while practising. As a result, Mr Turner argued that it breached the standard which only allows "a brief mention" of the sponsor's name during such advertisements. Consequently, as a result of the breach, the advertisement was a liquor one, not a sponsorship one, and as the cricket players portrayed were members of the New Zealand team, it breached the prohibition on featuring heroes of the young in liquor advertisements.

TVNZ considered the complaint under Rule E (ii) and (iii) of the Schedule of the Liquor Advertising Rules for Radio and Television. It provides:

- E Sponsorship advertisements, including sponsorship credits, by liquor advertisers shall be subject to the same rules as apply to liquor advertisements in the Code, subject to the following rules:
- (ii) They shall not imitate or use any parts of liquor advertisements (including packaging) with the exception of a brief mention of a company name, brand name or logo
 - (iii) They may feature heroes and heroines of the young
 - a) participating in a sponsored event or activity or
 - b) engaged in conduct related to a sponsored event, person or activity provided there is strict adherence to Rule A.

Pointing out that the New Zealand cricket team was sponsored by DB, TVNZ stated that the team members regularly wore clothing which acknowledged that sponsorship both during practice and games. Moreover, explaining that the sponsorship advertisement complained about extolled the "Silver Fern Cap", TVNZ argued that the appearance of the logo on the players' clothing was incidental to the theme of the advertisement. In addition and as a separate point, TVNZ argued that the rule did not impose a limit to the number of brief mentions and, accordingly, provided each mention was brief, more than one mention did not breach the standard.

In response, Mr Turner maintained that the standard allowed "one" brief mention, not a number of "brief" mentions. He also argued that the size of the logo on the traditional white test uniform was small and if the players were shown wearing that clothing, the



logo would be insignificant. TVNZ does not usually respond to a final comment received by the Authority but, on this occasion, it reported that it shared an interpretation with the Television Commercial Approvals Bureau, which argued that Rule E (ii), while confining the major sponsorship acknowledgment to a single brief mention of the company's name, brand name or logo, did not preclude other brief incidental visuals of the sponsorship identification provided the advertisement depicted the nature of the activity being sponsored.

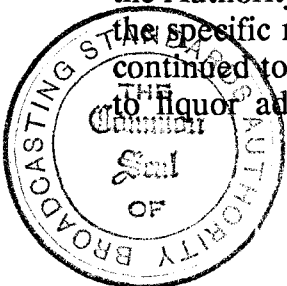
The standard refers to a brief "mention" and although the point was not raised by either the complainant or the broadcaster, the Authority considered whether the word "mention" was confined to an oral comment or whether it could also apply to a visual display. If the former, the advertisement would not threaten the rule as all the clothing worn by the players was portrayed visually and not referred to verbally. Taking into account the Oxford Concise Dictionary definition of the word "mention" as referring to, remarking upon or naming, the Authority accepted that a "mention" was not confined to an oral reference and that the visual references in the advertisement complained about amounted to a "mention".

Taking into account the wording of the standard and the use of the indefinite article "a" (brief mention), the Authority had no hesitation in dismissing TVNZ's argument that the Rule allowed for more than one "brief" mention of the company's name, brand name or logo. The issue posed by this complaint was whether, as TVNZ maintained, the Rule allowed other brief incidental visuals of the logo while the advertisement depicted the type of activity being sponsored or, as GOAL argued, only one brief mention of the name or logo. As a specific aspect of the advertisement to which the complaint related, the cricket players were shown at different times wearing their traditional test uniform, their one-day uniform, and their practice clothing. The DB logo was only obvious on the t-shirts worn by the players while practising.

The Authority also observed that the programme was a sponsorship advertisement to which strict rules apply; that the shots of the players were shown in quick succession; that the logos on the practice clothing were not focused on; that the advertisement was skilfully crafted to include practice scenes interwoven with out-takes from successful match play; and that the shots of the logos on the practice clothing were relatively brief.

Having taken these matters into consideration, the Authority returned to the wording of Rule E (ii) and, taking into account the intention behind the rules when they were promulgated, decided that Rule E (ii) did not allow for incidental but obvious depictions of the sponsor's logo during a sponsorship advertisement. The specific sponsorship advertisement could have been confined to shots of the players taking part in matches, rather than practising, and it would not have breached the standard.

The sponsorship advertisement clearly featured members of the current New Zealand cricket team. Accordingly, as a corollary to the finding noted in the previous paragraph the Authority upholds GOAL's complaint that as the advertisement did not comply with the specific requirements for sponsorship advertisements in Rule E of the Schedule, it continued to be, as the introduction to Rule E provides, subject to the rules applicable to liquor advertisements. Consequently, by showing members of the New Zealand



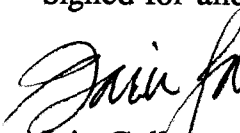
cricket team, it breached standard 4 of the Code for Advertising Alcoholic Beverages which states:

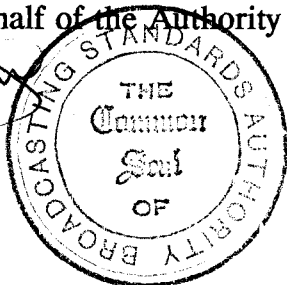
- 4 Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Television New Zealand Ltd of a DB sponsorship advertisement between 7.30 - 8.00pm on 25 January 1993 breached Rule E (ii) of the Schedule of the Liquor Advertising Rules for Radio and Television and, as a result, standard 4 of the Code for Advertising Alcoholic Beverages.

Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so on this occasion for the following reason. The Authority is currently revising the standards which apply to liquor advertising on radio and television and it is proposed that Rule E (ii) will be replaced although the details of the new provision have not been settled. In these circumstances, the Authority believes it would be inappropriate to impose an order.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



3 May 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 advertisement which appeared on TV1's *Moro Sports Extra* programme between 7.30pm - 8.00pm on 25 January.

Although purportedly a sponsorship advertisement for cricket from DB Draught beer, the phrase "DB Draught" was seen on the players' clothing on several occasions and thus it did not comply with the requirement for only a brief mention of the sponsor's name in sponsorship advertisements. Accordingly, GOAL complained, it was a liquor advertisement which, as it featured heroes of the young, breached a standard in the Code for Advertising Alcoholic Beverages.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 11 February 1993 when it reported that the complaint had been considered under Rule E (ii) and (iii) of the Schedule to the Liquor Advertising Rules and under standard 4 of the Code for Advertising Alcoholic Beverages.

Rule E refers to sponsorship advertisements and allows a brief mention of a company's name, brand name or logo. Pointing out that the New Zealand cricket team was sponsored by DB, TVNZ stated:

Part of a sponsorship deal inevitably requires the recipients of the sponsorship to indicate the sponsorship by way of logos on their apparel. The New Zealand Cricket Team routinely wears apparel indicating the DB sponsorship both during practice and during games.

Adding that the sponsorship message extolled the "Silver Fern Cap", TVNZ argued that the DB logos on players' clothing appeared incidentally and that the only aspect of liquor which was featured, as allowed by the rule, was the company's logo included in the sponsorship credit at the end of the advertisements.

Furthermore, TVNZ said, even if the rule was interpreted strictly, as it allows for the brief mention of the logo but does not restrict the number of "brief mentions", the advertisement had not breached the rule.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 15 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.

Accepting that the appearance of the phrase "DB Draught" at the end of the advertisement as part of the sponsorship credit was the "brief mention" of the company's name allowed by the rules, Mr Turner argued that the appearances of the logos on the players' clothing amounted to some brief mentions. That was in contravention of the requirements.

Mr Turner also maintained that the shots of the clothing bearing the sponsor's name was not incidental, as TVNZ stated, but "very carefully crafted". He concluded:

Cricketers only wear the DB logo prominently when playing in their one-day-match pyjamas. The advertisement could have avoided frequent showing of the DB logo by showing shots of cricketers wearing the more traditional garb in Shell Trophy or test matches.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 17 February 1993 and TVNZ's reply, 25 February.

Expressing agreement with GOAL that the appearance of the phrase "DB Draught" at the end of the advertisement amounted to the sponsorship credit in compliance with the Rule E, TVNZ disagreed that the "occasional and incidental glimpses of DB logos and symbols on the players' clothing" breached the Rule. The cricketers were shown participating in the sponsored activity and, TVNZ maintained:

It is not credible to believe that Rule E (iii) intends that players shown participating in the sponsored activity should be depicted without the sponsorship identifications they routinely wear as part of their attire.

GOAL's Final Comment to the Authority

In reply to TVNZ, in a letter dated 2 March 1993 Mr Turner on GOAL's behalf maintained that Rule E (ii), in view of its wording, only allowed a brief mention of the sponsor.

Mr Turner contrasted the DB symbol worn by cricketers wearing traditional whites, which was a small DB logo on the arms, with the one-day uniform which consisted of the logo on the player's chest. Describing the former as insignificant, Mr Turner argued that the advertisement could have shown the players wearing the traditional uniform without detracting from DB's sponsorship message in regard to the New Zealand cricket team. He concluded:

TVNZ recently upheld a complaint from GOAL about an interview with a cricketer who was wearing brewery advertising on his cap. It is not credible to



believe that an interview in the news should be more tightly controlled than a paid-for advertisement.

Further Correspondence

In a letter dated 11 March 1993, TVNZ took what it described as "the unusual step" of responding to a complainant's final comment.

TVNZ said that in concurrence with the Television Commercial Approvals Bureau, it interpreted Rule E (ii) of the Schedule to allow a single mention of a company's name, brand name or logo. That had involved a brief depiction and verbal acknowledgement of the DB logo at the end of the sponsorship advertisement about which GOAL had complained. TVNZ continued:

We do not believe that Rule E (ii) is intended to preclude other brief views of sponsorship identification which appear incidentally as a result of the sponsorship advertisement depicting the nature of the activity being sponsored.

As indicated in our earlier letter we believe that it is not credible to think that Rule E (iii), which allows for heroes and heroines of the young to be shown participating in sponsored activities, intends that those participants should be seen devoid of the sponsorship regalia which is part of their normal attire.

Mr Turner on GOAL's behalf, in his reply dated 15 March 1993, wrote:

I can only restate my point that DB could have adequately told the public of its sponsorship of cricket by showing shots of cricketers in white clothes. The DB logo is quite insignificant on the white clothing.

