

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 65/93
Dated the 20th day of May 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

THE WAREHOUSE LIMITED
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Introduction

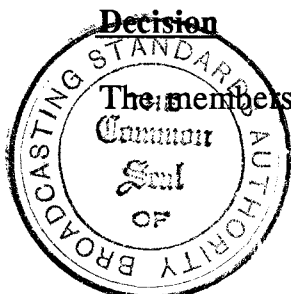
An investigation by the Customs Department into possible irregularities in the importing of men's underwear was dealt with in an item on *One Network News* broadcast on Television One on 2 December 1992.

The Warehouse Ltd complained to Television New Zealand Ltd that the item implicated it in customs duty evasion and that this was unfair, factually incorrect and neither objective nor impartial. Further, the item misrepresented The Warehouse by describing it as an importer when it had a policy to promote New Zealand made products actively.

In declining to uphold the complaint, TVNZ maintained that the item did not imply or suggest that The Warehouse was involved in customs duty evasion and that it was not inaccurate to describe the store as an importer. Dissatisfied with TVNZ's decision, The Warehouse referred its 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 usual practice, the Authority has determined the complaint without a formal hearing.

The Warehouse complained to TVNZ about an item on *One Network News* on 2 December 1992 which reported on possible irregularities in the importing of underwear and an investigation into Customs, claiming that to illustrate the story with a visual of one of its stores was to imply that it was involved in duty evasion. The Warehouse reported that it had checked with its customs agent and had ascertained that none of the errors documented by the Customs Department related to imports of underwear by The Warehouse. It requested an apology, a correction and compensation from TVNZ for implicating it in the investigation. When TVNZ failed to act on this request, it lodged a formal complaint in which it claimed that the item breached broadcasting standards because it was factually inaccurate and lacked balance and fairness. It claimed specifically that the item breached s.4(1)(d) of the Broadcasting Act 1989, which states:

- 4(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -
- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest;

The Warehouse also alleged that the item breached the following standards in the Television Code of Broadcasting Practice (omitting the exceptions to G13) which require broadcasters:

- G1 To be truthful and accurate on points of fact.
- G4 To deal justly and fairly with any person taking part or referred to in any programme.
- G5 To respect the principles of law which sustain our society.
- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
- G7 To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.
- G11 To refrain from broadcasting any programme which, when considered as a whole:
- (i) Simulates news or events in such a way as to mislead or alarm viewers.

- (i) To avoid portraying people in a way which is likely to encourage



denigration of, or discrimination against any section of the community on account of sex, race, age, disability, occupation status, sexual orientation or the holding of any religious, cultural or political belief.

The following standards, it continued, were also breached:

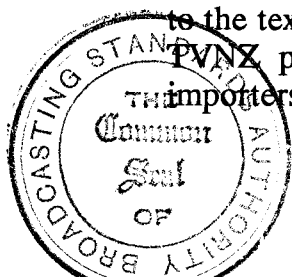
- G14 News must be presented accurately, objectively and impartially.
- G16 News should not be presented in such a way as to cause unnecessary panic, alarm or distress.
- G19 Care must be taken in the editing of programme material to ensure that the extracts used are a true reflection and not a distortion of the original event or the overall views expressed.
- G20 Significant errors of fact should be corrected at the earliest opportunity.

At the outset, TVNZ maintained that the item did not suggest or imply that The Warehouse was an importer, nor did it imply that it was involved in customs duty evasion. Nevertheless, it observed that it did not regard the description of The Warehouse as an importer to be inaccurate, because it was, in spite of efforts to sell New Zealand goods, largely a seller of imported stock. Further, it rejected that the inference could be drawn that The Warehouse was guilty of customs duty evasion, pointing out that the item merely suggested that it might have been investigated by the Customs Department, but that being investigated was not to be found guilty.

In its assessment of the standards cited by The Warehouse, TVNZ rejected standards G5, G7 and G16 as inapplicable. It noted that s.4(1)(d) covered the same ground as G4 and G6. It then assessed the complaint under the remaining standards and concluded that none had been breached. It justified using the film footage which showed The Warehouse, on the grounds that it was so well known that it immediately conveyed to viewers the kind of outlet being discussed. It maintained that the item was balanced, fair and impartial. TVNZ did not believe that there was anything in the programme which would have misled or alarmed viewers, nor was any group or individual denigrated by it. It believed that the film footage of The Warehouse was used appropriately, and that there were no significant errors of fact identified by The Warehouse which ought to have been corrected. TVNZ declined to uphold any aspect of the complaint.

With reference to the standards cited by The Warehouse, the Authority agreed with TVNZ that standards G5, G7 and G16 were inapplicable and that s.4(1)(d) of the Broadcasting Act 1989 was subsumed on this occasion by standards G4, G6 and G14. It then proceeded to assess the complaint against the remaining standards.

The Authority began its examination of the complaint by relating the theme of the item - that customs irregularities had occurred with respect to the importation of underwear - to the text and accompanying visuals. First, it noted that the transcript clearly stated, as TVNZ pointed out, that shops were not being investigated by Customs, but only importers. However, the Authority was of the view that for many people, The



Warehouse, as its name implied, was more than simply a retail store. As the news report stated, it relied on a large volume of imported stock and, by implication, could just as aptly be described as an importer. Although arguably inaccurate, this implication that the business was an importer was reinforced by the visual depiction and reference to The Warehouse as a store which relied on imported goods. However, the Authority decided that although it was possible the script might have conveyed the wrong impression, it was not inaccurate in what it did say. It declined to uphold the standard G1 complaint.

With respect to the complaint that The Warehouse had not been treated fairly by the item, the Authority considered that it was unfair of TVNZ to associate it with the allegations because it was possible that viewers might gain the impression that The Warehouse was under investigation. It regarded the juxtaposition of the film footage of The Warehouse with the allegation of customs irregularities as unfortunate. It believed that it was unfair to illustrate the story by showing the outside of one of The Warehouse's stores. Although the story did state that only importers were being investigated it would be reasonable to expect that people could draw the conclusion that The Warehouse was involved in that investigation. In fact, The Warehouse reported that people did draw that inference and the Authority could understand why. It agreed that the use of a well-known store was an effective way to illustrate the story, but felt that it was unfair as the item was unable to state that The Warehouse was not involved in the investigation and in view of the serious allegations being made, more care should have been taken to eliminate the distinct possibility that the complainant was guilty by association. Nor was there any subsequent statement made eliminating The Warehouse from suspicion. Although it regarded the breach as unintended it was, nevertheless, unfair to The Warehouse. The Authority upheld the complaint that the item was in breach of standard G4.


The Authority dismissed the complaint that the item was in breach of standard G13, noting that the standard did not apply to a company. It found no breach of standard G11(i) and noted that the complaint under standards G6 and G14 was subsumed under standard G4 considered above. Finally, it examined the complaint under standards G19 and G20 and, in declining to uphold either of these aspects of the complaint, it observed that the use of the film footage to illustrate the item did not distort the original event or the overall views expressed, and that there were no significant errors of fact which ought to have been corrected.

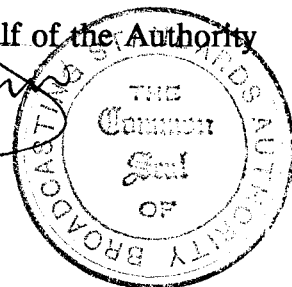
For the reasons set forth above, the Authority upholds the aspect of the complaint that the broadcast by Television New Zealand Ltd of the item on *One Network News* between 6.00pm and 6.30pm on 2 December 1992 breached standard G4 of the Television Code of Broadcasting Practice.

The Authority declines to uphold any other aspect of the complaint.

Having upheld a complaint the Authority may make an order under s.13(1) of the Broadcasting Act 1989. It does not intend to do so on this occasion because it believes the breach to be unintentional and largely inferential.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
20 May 1993



Appendix

The Warehouse Limited's Complaint to Television New Zealand Limited

In a fax dated 8 December 1992, The Warehouse lodged an informal complaint with TVNZ regarding the broadcast of an item on *One Network News* on Television One on 2 December concerning possible irregularities in the importing of underwear, and sought an apology and retraction. In a second fax dated 11 December The Warehouse restated its concern that the item appeared to implicate it in duty evasion. It noted that it had checked with its Customs Agent and determined that none of the errors documented by the Customs Department related to imports of underwear by The Warehouse. Again it requested an apology, a correction and compensation for costs incurred.

In a letter dated 14 December 1992, TVNZ responded that it was of the view that the item was accurate and did not warrant a correction. The Warehouse then made a formal complaint, dated 18 January 1993, to the Broadcasting Standards Authority which was referred to TVNZ in which it cited section 4(1)(d) of the Broadcasting Act and standards G1, G4, G5, G6, G7, G11, G13, G14, G16, G19 and G21 of the Television Code of Broadcasting Practice which it alleged had been breached by the broadcast of the item.

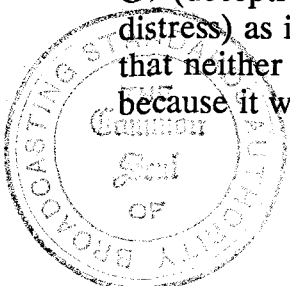
TVNZ's Response to the Formal Complaint

TVNZ advised The Warehouse of its Complaints Committee's decision in a letter dated 10 February 1993. It reported that the complaint had been considered under the standards G1, G4, G5, G6, G7, G11, G13, G14, G16, G19 and G21 of the Television Code of Broadcasting Practice.

TVNZ maintained that the item did not suggest or imply that The Warehouse was an importer, noting that the script stated that shops like it rely on imported stock but then went on to emphasise that shops were not being investigated. In response to The Warehouse's argument that it was unfair to describe it as an importer, TVNZ noted that although The Warehouse had made efforts to include more New Zealand manufactured goods, it was still substantially a seller of imported goods.

With reference to The Warehouse's complaint that the item implied that it was involved in customs duty evasion, TVNZ maintained that at the most the item implied that it may have been investigated by the Department and that to be under investigation was not to be found guilty.

TVNZ then examined each of the standards cited, rejecting G5 (principles of law), G7 (deceptive programme practice), and G16 (causing unnecessary panic, alarm or distress) as inapplicable. It found no inaccuracies in the programme and concluded that neither G1 nor G14 was not breached. It concluded that G4 was not breached because it was not unfair to show The Warehouse to illustrate the type of retail outlet



being described and that G6 was not breached because the issue was treated in a balanced manner and with impartiality and fairness. It did not believe anything in the programme would have misled or alarmed viewers and thus G11(i) was not breached.

Since it was unable to detect which groups or individuals would have been denigrated by the broadcast, it did not believe G13 was breached. In TVNZ's view, standard G19, which requires care to be taken in editing, was not breached because the pictures of The Warehouse were only shown when the commentary specifically related to retailers like The Warehouse. Finally, it concluded that standard G21 was not breached because no significant errors of fact were discovered. Accordingly, TVNZ declined to uphold the complaint.

The Warehouse Ltd's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 17 February 1993, The Warehouse referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

The Warehouse repeated its contention that it was unjustly portrayed in the item, and that this had been confirmed by comments from customers and suppliers who believed that The Warehouse was implicated in duty evasion. It believed that the description of The Warehouse as an importer jeopardised its reputation as a promoter of New Zealand made products. It felt aggrieved that it had no opportunity to correct the impression that had been given.

TVNZ's Response to the Authority

As is its usual practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 22 February 1993, and TVNZ's reply, 24 March.

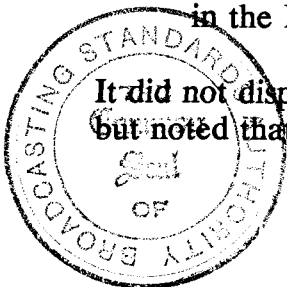
TVNZ commented:

We again deny that the item contained any implication that The Warehouse Limited was involved in customs duty evasion.

A vision of premises of The Warehouse Limited was used to illustrate the type of garments that were at the centre of the customs investigation. So well known is The Warehouse nationwide that this vision conveyed instantly to viewers the nature of the merchandise being discussed.

The Warehouse was portrayed as a retailer of the products - and the item clearly stated that retailers were not being investigated and were not involved in the Ministry's investigation.

It did not dispute The Warehouse's policy to promote New Zealand-made products, but noted that the store was still a major retail outlet for imported goods and that it



was therefore fair and accurate to describe it as relying on imported stock.

TVNZ rejected codes G5, G7 and G11(i) as irrelevant to the complaint and noted that it did not test the complaint against G1 and G14 because The Warehouse did not specify any examples of errors of fact in the item.

The Warehouse Ltd's Final Comment to the Authority

In a letter dated 6 April 1993, The Warehouse submitted that it still considered that it was deemed guilty by association in the item and was given no reasonable opportunity to correct or defend the matter.

It maintained that it was dissatisfied with the way in which the public would perceive The Warehouse as a result of the item.

