

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 93/93

Dated the 9th day of August 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
CANTERBURY TELEVISION
LIMITED

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

DECISION

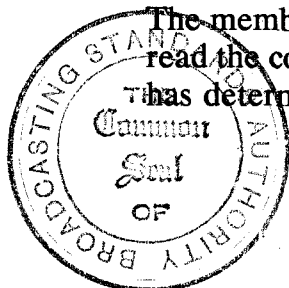
Introduction

DB Sport is the title of a programme regularly broadcast by Canterbury Television Ltd between 7.00 - 7.30pm. The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to CTV about the frequency of the appearances of the DB logo during the 1/2 hour programme broadcast on 1 March 1993. That frequency, he continued, breached the prohibition on the saturation of liquor promotion on television.

Arguing that frequency was not the only relevant component when considering saturation, CTV maintained that because of the logo's size, prominence, the length of time of the display and its context, the standard had not been breached. Dissatisfied with CTV's response, GOAL referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed the programme 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 complained to CTV about the frequency of the appearances of the DB logo during the programme *DB Sport* broadcast between 7.00 - 7.30pm on 1 March 1993. Their number, he continued, was excessive and breached the requirement in standard 29 of the Television Code of Broadcasting Practice which states in part:

- 29 Saturation or an impression of saturation of liquor promotion, including liquor advertising, sponsorship advertising and programme sponsorship credits by liquor advertisers must be avoided.

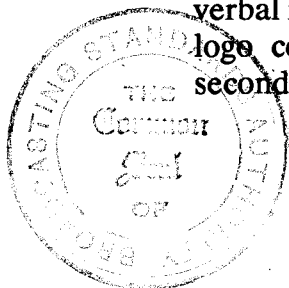
This is the third complaint GOAL has made to CTV about the number of appearances of the DB logo on *DB Sport*. Because it was dissatisfied with CTV's decision on the first two occasions to decline to uphold the complaint, Mr Turner on GOAL's behalf referred both complaints to the Authority. The first complaint received by the Authority referred to the broadcast on 7 September 1992 and the Authority published its determination in Decision No: 8/93 (dated 15 February 1993). The second complaint referred to the broadcast on 9 November 1992 and the decision (No: 69/93) was issued on 9 June 1993. This third complaint, as noted above, referred to the broadcast on 1 March 1993.

As most of the issues raised in each complaint have been similar, the Authority has used excerpts from these previous decisions where it has been appropriate. In the decision on the first complaint (No: 8/93 dated 15 February 1993) the Authority quoted from an earlier decision dealing with saturation (No: 70/92) and recorded:

After deciding in that complaint that size was a matter of only low importance, the Authority concluded that the frequency of seven appearances over 20 minutes, amounting in total to 30 seconds, breached standard 29. As the current complaint refers to 12 appearances of the DB Draught roundel, during a little more than 23 minutes, amounting to 2 minutes 15 seconds, the precedent set by Decision No: 70/92 leads the Authority to uphold the current complaint unless there is some outstanding feature which justifies distinguishing the two complaints.

Some of the appearances of the roundel in the earlier decision were accompanied by a verbal reference to the sponsor which, the Authority decided, reinforced the impression of saturation. That did not occur with the CTV programme *DB Sport*. However, on the CTV programme, a large logo was part of the background of the announcers' set and was seen when both announcers were filmed. That dominant logo was screened five times for a total of 72 seconds during the broadcast.

Thus, the Authority decided, although the appearances of the logo were not accompanied by a verbal reference to the sponsor, the greater number of appearances of the roundel at the corner of the screen (12 as opposed to 5 over a slightly longer period) and the extra appearances of the large logo behind the announcers (five appearances) more than compensated for the omission of the verbal references. Indeed, as CTV acknowledged, the total time during which the logo containing the words "DB Draught Sport" appeared was 3 minutes 51 seconds.



As noted in Decision No: 70/92 and despite these mathematical calculations, the standard also refers to the *impression of saturation of liquor promotion*. That is a subjective concept and each complaint, therefore, involves a matter of degree. The calculations have been included on this occasion solely to give some guidance as to the Authority's interpretation of the standard.

Accordingly, following and endorsing the precedent set in the earlier decision, the Authority concluded that the appearances of the logo on *DB Sport* broadcast by CTV gave the impression of saturation of liquor promotion and thus breached standard 29. The Authority also noted that CTV stated that the appearances of the logo were justified in the interests of the programme and its promotion rather than that of the sponsor. If the particular logo used was not promoting the sponsor, the Authority considered then, that if one was used at all, it would surely have promoted CTV, sport in general or the particular sport or team being featured. The Authority could not understand how it could be argued that a logo, particularly in the liquor industry where brands, brand names and logos are of paramount importance, could not be said to be promoting the brewery or a brand name.

The second complaint concerned the broadcast of *DB Sport* on 9 November 1992. That complaint was made before the decision quoted from above was issued (No: 8/93 dated 15 February 1993) and complained that the broadcast, in addition to contravening standard 29, breached Rule E of the Schedule of the Liquor Advertising Rules which prohibits liquor advertisements before 9.00pm.

Whereas the Authority declined to uphold the Rule E aspect of the complaint, the saturation aspect under standard 29 was again upheld.

This current complaint referring to the 1 March broadcast was made after Decision No: 8/93 was issued and referred only to standard 29. CTV acknowledged that two similar complaints had been upheld but persisted with its reasoning advanced at the time of the complaint about the broadcast on 7 September 1992 and declined to uphold GOAL's complaint on this occasion again.

The Authority considered the arguments advanced at the time of the earlier complaints and reached a similar conclusion on this occasion - that standard 29 had been breached. Part of the decision when dealing with the second complaint applied to the current complaint. In Decision No: 69/93 (dated 9 June 1993), the Authority recorded:

The frequency of the appearances of the DB logo on *DB Sport* on 9 November was far in excess of that in the earlier decision and CTV, while disagreeing that the programme contained liquor promotion which gave the impression of saturation, acknowledged to the Authority that that aspect of the complaint would be upheld on this occasion in view of the precedent. The Authority agreed with the latter part of CTV's comment. On the basis of the precedent set by the earlier decision which it saw no reason to review, the Authority upheld the complaint that *DB Sport* contravened the liquor promotion restrictions in standard 29. Indeed, it decided that the breach on this occasion, because of the frequent



displays of the DB logo, amounted to a gross contravention of the rules.

In a programme of approximately 22 minutes the company name, brand name or logo was seen approximately fifty times in addition to such normally accepted promotions as the signs around the race track, at the finishing post etc. Viewers were told by a representative of the caterers that the biggest supplier of beer was DB, which delivered a container of 20,000 litres from DB Timaru, and the General Manager DB South Island Breweries Ltd was interviewed at length. During that interview he selected his choice for every race on the DB Cup day programme and every pick by himself and the interviewer was accompanied by a roundel each and "DB Pic" logo. At times the screen was saturated by the addition of a third promotion in the form of a substantial promotional backdrop. These of course were in addition to all the oral references to the sponsors in conversation and comment.

The extent of the saturation of liquor promotion on the *DB Sport* programme on 1 March (the current complaint) was similar (if not at a slightly higher level) to that of the first (No: 8/93) but considerably less than the overwhelming degree of saturation in the second (No 69/93 just quoted).

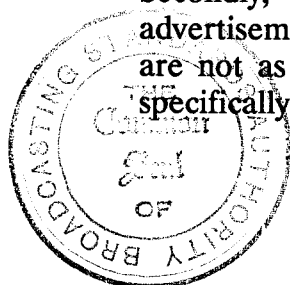
Taking into account the two earlier decisions about CTV's *DB Sport*, in view of the frequency of the appearance of the DB logo on this occasion the Authority had no hesitation in deciding that the broadcast of *DB Sport* on 1 March 1993 breached standard 29.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Canterbury Television Ltd of *DB Sport* on 1 March 1993 breached standard 29 of the Television Code of Broadcasting Practice.

Having upheld the complaint, the Authority may make an order under s.13(1) of the Broadcasting Act 1989. When it upheld the complaint about *DB Sport* on 9 November 1993 (Decision No: 69/93) the Authority recorded that it did not intend to impose an order on that occasion for the following reasons.

First, the breach of standard 29 occurred before the Authority had ruled - and upheld - a complaint about an earlier broadcast of *DB Sport*. As noted in the decision, this complaint was made before the broadcaster was advised (Decision No: 8/93 dated 15 February 1993) that the amount of saturation exposure on the earlier *DB Sport* breached the saturation requirement in standard 29. It would have viewed the situation very differently had the complaint referred to a programme broadcast after CTV had received that decision. As detailed [in the extract cited above], the programme was in gross breach of standard 29 both in spirit and law and under other circumstances would have invoked a penalty.

Secondly, the Authority acknowledges that the distinctions between liquor advertisements and sponsorship advertisements (and indeed sponsorship credits) are not as lucid as they could be. It is a concern which has been addressed specifically in the recently released standards which apply to the promotion of



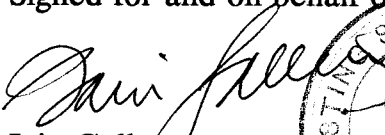
liquor on radio and television. Under these rules which are now in effect, programmes containing extensive liquor promotion such as *DB Sport* are not acceptable

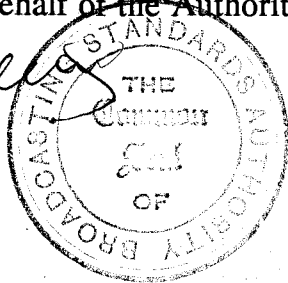
As this complaint refers to a broadcast by CTV after it had received Decision No: 8/93, the Authority believes the imposition of a penalty is appropriate. However, as the degree of the saturation in the broadcast on 1 March 1993 was not as extensive as the 11 November complaint (Decision No: 69/93 from which the above quote has been taken), the Authority considers that the following order is appropriate in this case.

ORDER

The Authority orders CTV to broadcast on *DB Sport* within 14 days of the date of this decision a statement approved by the Authority which is a brief summary of this decision.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



9 August 1993

Appendix

GOAL's Complaint to Canterbury Television Limited

In a letter dated 8 March 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Canterbury Television Ltd about the programme *DB Sport* broadcast between 7.00 - 7.30pm on 1 March.

The DB logo had been screened so frequently, he continued, that the programme was in breach of standard 29 of the Television Code of Broadcasting Practice which prohibits the saturation or the impression of saturation of liquor promotion in a programme.

CTV's Response to the Formal Complaint

CTV advised GOAL of its decision on the complaint in a letter dated 30 May 1993. It acknowledged that two identical complaints had been made previously and wrote:

For the reasons set out in our earlier letter, we cannot uphold the complaint in this instance.

The first formal complaint about the programme *DB Sport* concerned the broadcast on 7 September 1992 and in its response to GOAL about the saturation complaint on that occasion, CTV wrote (in a letter dated 8 December 1993 as recorded in the Appendix to Decision No: 8/93):

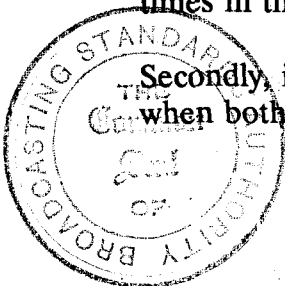
Noting that the complaint alleged saturation on the basis of frequency, CTV argued that the approach ignored the other aspects of the broadcast of the words "DB Draught" such as size, prominence, length of time of their display and context.

Reference only to frequency is, in Canterbury Television's view, to misrepresent the significance and impact of the word's appearance in the context of the programme.

CTV said that the logo, with the exception in the introduction, was screened in four different situations all of which, it added, were justified in the interests of the programme rather than in the interests of the sponsor.

Although in its letter CTV said that the logo was screened in four different situations, it only listed three occasions on which it was screened. First, it appeared as part of the opening and closing titles and before and after each commercial break. On the programme complained about it screened five times in this way for a total of 24 seconds.

Secondly, it was part of the background of the announcers' set and was seen when both announcers were filmed. It was thus screened five times for a total



of 72 seconds.

Thirdly, the logo appeared as part of the super-captions when an interviewer, a guest or a result was presented. The small logo on the bottom right or left hand corner of the screen was "very unobtrusive". During the 7 September programme, it was screened in this way 12 times for a total of 2 minutes 15 seconds.

Pointing out that the number of appearances of the logo on the 7 September programme was similar to the number of appearances on similar programmes about which complaints had not been received, CTV concluded:

The total time therefore during which the logo containing the words DB Draught Sport appeared was three minutes fifty one seconds.

When all these considerations have been taken into account, it is Canterbury Television's view that neither the time of the exposure, the manner in which the words appear, their size nor their place in the construction of the various pictures, can justify in the slightest way the suggestion that they constitute saturation advertising. Canterbury Television considers that it has complied fully with Standard 29 of the Television Programme Standards.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with CTV's response to the complaint, in a letter dated 6 June 1993 Mr Turner, on GOAL's behalf, referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1992. GOAL was dissatisfied that CTV had not upheld the complaint in view of the Authority's earlier decisions, Mr Turner wrote, and it persisted in its argument that the frequent appearances of the DB logo were in breach of standard 29.

CTV's Response to the Authority

When asked by the Authority whether it wanted to comment on the referral of the complaint on 21 June 1992 CTV supplied the Authority with a copy of its letter to GOAL dated 30 May.

GOAL's Final Comment to the Authority

In a letter to the Authority dated 2 July 1993 in response to CTV's reply, Mr Turner on GOAL's behalf claimed that CTV had in effect admitted the breach and wrote:

It has treated the Authority with contempt and I hope that the Authority will take a very serious view of this continued offending.

