

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 3/90

Dated the 8th day of March 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR JANE RITCHIE

of Hamilton

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Dr Ritchie's Complaint to Television New Zealand Limited

By letter dated 6 September 1989 Dr Ritchie made what she described as a "formal complaint" to TVNZ about an advertisement for Bluebird Lite potato chips. The letter did not specify the date on which Dr Ritchie had seen the advertisement or the television channel which had screened it. Nor did it specify, in any "technical" way, the grounds for the complaint: Dr Ritchie did not allege a breach of any particular rule of the Codes of Broadcasting Practice for Television which govern television programme standards, including advertising standards.

Despite the lack of those details the complaint was plainly directed at two features of the Bluebird Lite advertisement. First, Dr Ritchie complained that "a large proportion of the advertisement" shows the mid portion of the body of a young woman which, she alleged, "denigrates" and is "degrading" to women because it "uses the pornographic play of dehumanising women by focusing, in a sexually suggestive manner, on just one



part of the [female] body." Secondly, Dr Ritchie complained that a scene in the advertisement, in which a man's hand reaches out towards the woman's hip and buttock region, suggested to her that the woman was being sexually harassed.

The Advertisement

For ease of understanding the protracted correspondence provoked by the complaint and summarised below, a brief description of the Bluebird Lite potato chip advertisement is supplied.

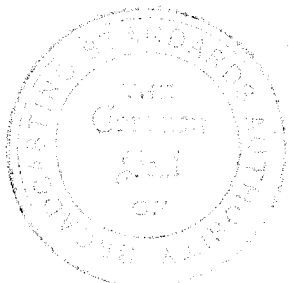
The advertisement runs for approximately 30 seconds. It employs, for much of that time, a rapid montage effect whereby short clips of film of different subjects, or of the same subject shot from different camera angles, are spliced together. The resulting fast-moving set of alternating images presents a "story", the central character in which is a young woman clad in jeans and a midriff top.

Recurring shots of the woman's face, hips and buttocks region and whole body in rear-view comprise the major part of her role in the advertisement. By these means she is first depicted, in very rapid montage, putting down a set of weightlifter's weights and pulling on her jeans. Then, at a pace which is more easily followed by the viewer, the woman is seen walking jauntily along the corridor of a suite of business offices, eating potato chips from a packet carried in a shoulder bag which rests at the level of her left hip. As she walks several men follow her departing figure with their eyes.

Towards the end of the advertisement one man is depicted as following the woman physically: his hand is seen reaching out towards the woman's hip and buttock region. She then swings her shoulder bag over her head, emptying the contents of the potato chip packet into the air above her. This apparently causes the man to trip and fall, for in the next scene a pair of male feet and numerous potato chips are shown flying through the air. The advertisement ends with further shots of the young woman and of the advertised product.

The voice-over for the advertisement, read by a male voice to a musical backing, is as follows:

"Slip into the chip.
A lot less fat
your hips won't miss.
And less salt
but with a taste
that's very chip.
And that's very hip.
Very hip, very chip.
Very hip, very chip.
Bluebird Lites.
Hip chip."



TVNZ's Response to Dr Ritchie's Complaint

By letter dated 11 September 1989 TVNZ acknowledged Dr Ritchie's letter and advised her that her complaint would be dealt with by the TVNZ Complaints Committee at its meeting on 27 September and that she would be advised of its decision.

On 6 October 1989 TVNZ wrote to Dr Ritchie advising her that the Complaints Committee had not upheld her complaint, explaining the grounds for that decision and notifying her of her right, should she be dissatisfied with the decision, to refer the matter to the Broadcasting Standards Authority.

TVNZ's letter stated that the Complaints Committee had considered Dr Ritchie's complaint in the light of rule 4 of the Code for People in Advertising which was then set out. (The Code for People in Advertising, issued by the Committee of Advertising Practice (CAP) in August 1988, is identical in all material respects to the Code for the Portrayal of People in Advertising, developed by the Television Standards Committee in 1989 for inclusion in the Codes of Broadcasting Practice for Television. The latter Codes, and the CAP Codes, were given interim pro forma approval by the Broadcasting Standards Authority on 26 July 1989. At the time of Dr Ritchie's complaint, the Codes of Broadcasting Practice for Television were unpublished, hence TVNZ's reliance upon the CAP Code for People in Advertising.)

Rule 4 of the Code for People in Advertising provides:

Advertisements should not employ sexual appeal in a manner which is exploitive and degrading of any individual or group of people in society to promote the sale of products or services. In particular, women shall not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product and children shall be portrayed in a manner which reflects their innocence and does not exploit their sexuality.

The Complaints Committee's decision not to uphold Dr Ritchie's complaint was explained in the following terms:

"It was noted that the advertisement was something of a clever play upon words, which exploited a women's [sic] wiles in a farcical way so as to achieve a weightwatchers-type image.

A study of the early part of the script gave an indication as to why the camera dwelt on the woman's hips and back view. The voice behind said: "A lot less fat your hips won't miss", which coincided with a caption which said: "30 per cent less oil - lightly salted"...



The outstretched hand incident ... seemed to embrace the multiple prospect of grabbing at her bottom, or the packet of chips in her bag, or the Lite label on her hip pocket. This hand action was considered to be not the most intelligent of ploys to insert into the advertisement, although it could be seen to be moderated by the fact that it resulted in a packet of chips being flung backwards at the owner of the hand, causing him to go headover heels [sic] in quite an unseemly way ...

It was agreed that had the entire advertisement dwelt on the woman's backside you may have had a valid point. However there were a variety of shots used including full length and head shots devoted to sampling chips. The fact that a packet of chips doubles for a pocket patch was seen as presenting justification for some of the back views ...

The model presents an image of a happy and attractive young woman. It was observed that had the wearer of the jeans been an attractive young man of athletic build it would be doubtful whether anyone would suggest it to be pornographic or denigrating to men.

In brief the advertisement was considered as a fun advertisement of a nature not uncommon to television advertising worldwide ...".

With regard to Dr Ritchie's assertions that the advertisement presents an image of sexual harassment and uses pornographic ploys, TVNZ's letter of 6 October 1989 conveyed the Complaints Committee's view that such assertions appeared "to be taking matters rather too far".

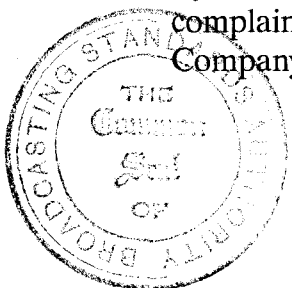
Dr Ritchie's Complaint to the Broadcasting Standards Authority

On 12 October 1989 Dr Ritchie, being dissatisfied with the decision of the Complaints Committee, referred her complaint to the Broadcasting Standards Authority pursuant to section 8(a) of the Broadcasting Act 1989.

In her letter of referral Dr Ritchie highlighted the part of rule 4 of the Code for People in Advertising which prohibits the use of women's sexual appeal simply to draw attention to an unrelated product and expressed her astonishment at the Complaints Committee's decision that the advertisement did not contravene that part of the rule.

TVNZ's Response to the Authority

By letter dated 4 December 1989 TVNZ responded to the referral of Dr Ritchie's complaint to the Authority. Citing its letter of 6 October as "an essential part of the Company's response to this complaint" TVNZ added the following comments:



"... the company would reinforce its belief that the complainant has taken a rather exaggerated view of the so-called sexual appeal element. Subsequent explanations from the production manager for the advertisement indicated that there was no intention to offend women or imply harassment in any way. He claimed that in actual fact the lady was intended to be "our hero who is in total control of the situation". She has the last laugh when she knocks the man over with her bag. He considered the commercial should be evaluated in its intended lighthearted approach.

The company considers claims that sexual appeal or emphasis are exploited in the commercial misrepresents the intention of the advertisement. Furthermore, it would emphatically deny that pornographic techniques were being utilised ... Finally the company would submit that the commercial, although it had its imperfections, did not go beyond the bounds of the rule in question. The lighthearted and flippant nature of the portrayal appears to have been misconstrued for sexual exploitation, which was never intended, and which the Committee believed was not realised in the final track. Certainly it could not determine that the message was conveyed in a pornographic manner."

In addition, TVNZ's letter of 4 December 1989 informed the Broadcasting Standards Authority that "although the advertisement has been screened again since the [Complaints] Committee reached its decision, the commercial has now been withdrawn."

Dr Ritchie's Comment

By letter dated 5 December 1989 the Authority sent Dr Ritchie the response received from TVNZ and asked for any further comments she might make. In a telephone conversation with the Advisory Officer of the Authority on 8 December 1989 Dr Ritchie made two further comments: that TVNZ is not aware of current thinking on pornography - which thinking is presented in the 1989 New Zealand Report of the Ministerial Committee of Inquiry into Pornography; and that the intention of the producers of the advertisement must be separated from the effect of the advertisement on viewers.

Preliminary Consideration of the Complaint by the Broadcasting Standards Authority

At its meeting in Wellington on 11 and 12 December 1989 the Broadcasting Standards Authority commenced its consideration of Dr Ritchie's complaint. Each of the four members of the Authority had already viewed the Bluebird Lite potato chip advertisement several times separately but it was viewed again at the meeting by the Authority as a whole.



In their preliminary discussion, Authority members noted that although Dr Ritchie's original letter of complaint to TVNZ did not mention the Codes governing television advertising, TVNZ's Complaints Committee had interpreted her letter to be alleging a breach of rule 4 of the Code for People in Advertising and had proceeded to reach its decision on that basis. Since Dr Ritchie's familiarity with the Codes had not been ascertained and she had not been asked by TVNZ to confirm its interpretation, it concerned Authority members that the complaint had been dealt with in that manner. It was noted by Authority members that other rules in the Code for People in Advertising could be considered to be relevant to Dr Ritchie's complaint, particularly rule 2 which provides :

Advertisements should not encourage belief in inaccurate or out-dated stereotypes in regard to the role, character, and behaviour of groups of people in society.

Further, Authority members expressed their desire for clarification of the Complaints Committee's reasons for failing to uphold the complaint in light of that part of rule 4 of the Code which provides:

In particular, women shall not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product.

It was felt that elaboration by TVNZ of the relationship between women's sexual appeal and the advertised product (potato chips) would assist the Authority in its consideration of the complaint.

Elaboration by Dr Ritchie and TVNZ

As a result of the Authority's preliminary discussion letters were sent on 13 December 1989 to Dr Ritchie and TVNZ asking for their further comments upon the matters outlined above.

Dr Ritchie responded by letter dated 21 December 1989 and a copy of her letter was forwarded to TVNZ. Dr Ritchie stated her view that the advertisement transgresses the part of rule 4 of the Code for People in Advertising quoted above, explaining "[T]he fact that the chip was low fat and therefore less likely to put weight on someone's hips was not apparent to me when I first viewed the advertisement."

With regard to rule 2 of the Code, which prohibits the encouragement of belief in inaccurate stereotypes, Dr Ritchie expressed her view that "the use of a man's hand to grab the woman's buttocks falls into this category. It is no longer acceptable for men to regard women as their sexual playthings, available for reading [sic] grabbing or touching without the consent of the woman. This advertisement portrays such a situation."



TVNZ responded by letter dated 11 January 1990. Because some of the matters raised in that letter were directed to the Authority and concerned TVNZ's and the Authority's procedures in dealing with complaints, only those parts of the letter pertaining to rules 4 and 2 of the Code for People in Advertising were relayed to Dr Ritchie. She did not wish to make further comment upon those matters.

With regard to the relationship between women's sexual appeal and the advertised product TVNZ stated:

"... the Committee did not believe that "sexual appeal", in the sense of a catalyst for the immediate arousal of instincts, was anything but established or proven. The link with the product is explained in the final paragraph on page one of my letter of 6 October to the complainant. It was a case of anatomy (the hips) being targeted for reference to the product's benign weight-producing propensity."

As to the possible relevance to the complaint of rule 2 of the Code for People in Advertising, TVNZ stated:

"... it is observed that the complainant now expands on and takes matters further than in her original letter of complaint by implying the reflection of certain behaviour, which was neither conveyed in the advertisement nor dealt with by the Complaints Committee. To suggest that the "chips" lady was being seriously portrayed as a "sexual plaything" available for "touching without consent", is clearly an interpretation not meshing with the reality of the portrayal. Furthermore it was not raised in her letter of 12 October to the Authority in which she stated her dissatisfaction with the TVNZ Ltd response and decision.

While it is acknowledged that the complainant's further reaction appears to have been prompted by the Authority's letter drawing attention to rule 2, it is submitted that it takes matters beyond the scope of the original complaint considered by the Complaints Committee and opens up new ground."

TVNZ also drew the Authority's attention to rule 6 of the Code for People in Advertising, commenting that it "has a bearing when it comes to interpreting the legitimacy of the advertisement in question, especially when it says 'Humorous and satirical treatment of people and groups of people is equally natural and acceptable in advertising, provided the portrayal does not encourage intolerance, prejudice and bigotry.' "

Decision

Dr Ritchie's complaint has raised important issues not only about the interpretation of the Code for the Portrayal of People in Advertising but also about the procedure to be adopted by broadcasters and this Authority when dealing with complaints made



pursuant to the Broadcasting Act 1989. Because the Authority has reached its decision in light of rule 4 of the Code for the Portrayal of People in Advertising, which was the basis for the decision of TVNZ's Complaints Committee, the procedural issues brought to light by Dr Ritchie's complaint will merely be the subject of concluding comment. The Authority notes that its decision upon the complaint, as well as the comments it makes thereafter, are explained at length for the reason that this is the Authority's first decision relating to the Code for the Portrayal of People in Advertising - a Code which is plainly capable of differing interpretations. Hence, the Authority has taken this opportunity to supply broadcasters with a clear "map" of its approach to the issues raised by the complaint.

The Authority accepts, for the purposes of this decision, that Dr Ritchie's complaint was fairly interpreted by TVNZ's Complaints Committee to be alleging a breach of rule 4 of the Code for People in Advertising. As previously noted, that rule provides

4. Advertisements should not employ sexual appeal in a manner which is exploitive and degrading of any individual or group of people in society to promote the sale of products or services. In particular, women shall not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product and children shall be portrayed in a manner which reflects their innocence and does not exploit their sexuality.

Since the complaint concerns the portrayal of a woman the last part of rule 4, about the portrayal of children, is not relevant.

The other two parts of rule 4 prohibit certain uses of sexual appeal generally and women's sexual appeal in particular. The first question for the Authority to determine is whether the Bluebird Lite advertisement uses sexual appeal.

In the rapid montage which comprises the advertisement the most frequently recurring shots are close-ups of the young woman's jeans-clad buttocks and rear-view shots of the woman walking. The Authority is in no doubt that the advertisement uses women's sexual appeal by that frequent focus upon the woman's buttocks. The Authority's conclusion is strengthened by the advertisement's less frequent use of shots of the woman's mid-body taken from the front and side angles as well as by its repetition of shots of the woman's face as she eats potato chips. There can be no doubt that shots of a woman eating potato chips need not rely upon the woman's sexual appeal. However, the occurrence of those shots in the rapid montage, i.e. in close association with shots of the woman's buttocks and rear-view figure, as well as the woman's facial expressions, support the Authority's conclusion that the woman's sexual appeal is used in the Bluebird Lite advertisement. As well, it is the Authority's view that the woman's sexual appeal is used, in a particularly distasteful manner, in the advertisement's outstretched hand incident: the argument put by TVNZ, that the viewing public would interpret the hand to be reaching for something other than the woman's buttocks, stretches the bounds of credibility.



The second question for determination is whether the advertisement uses women's sexual appeal in a manner which is prohibited by rule 4 of the Code for the Portrayal of People in Advertising. Plainly, TVNZ's Complaints Committee was of the view that the advertisement does not infringe either of the two parts of rule 4 which deal, respectively, with sexual appeal generally and women's sexual appeal in particular.

With regard to the second part of rule 4, which prohibits the use of women's sexual appeal simply to draw attention to an unrelated product, the Authority is unable to agree with the Complaints Committee's conclusion.

From TVNZ's letter of 6 October 1989 it appears that the Complaints Committee's decision not to uphold the complaint under this part of rule 4 rested largely upon two matters:

- its view that there is a connection between the advertised product's "benign weight-producing propensity" and the hips; and
- its view that the advertisement is of a "farcical" and "lighthearted" nature.

However, from TVNZ's letter of 4 December 1989 it appears that a third matter may have influenced the Complaints Committee's decision: its view that the intention of the advertiser is a relevant extenuating factor.

In the Authority's view, potato chips which contain less oil and salt than others are unrelated to women's sexual appeal and are, therefore, an "unrelated product" in terms of the second part of rule 4 of the Code for the Portrayal of People in Advertising. Any other view of the matter would admit of the possibility that any foodstuff at all is a product related to women's sexual appeal - provided only that it contains fewer fattening or "unhealthy" ingredients than some other foodstuff. The Authority firmly rejects such an interpretation and finds support for its view in the general principles stated in the Code for the Portrayal of People in Advertising, especially the second and third of those principles. They provide:

Members of the community are entitled to expect that they will be depicted fairly in advertisements and in a manner which respects the dignity, intelligence and capability of the individual - regardless of sex, race, age, cultural or religious belief, political commitment, education or occupational status.

In general, advertisements should aim to reflect the diversity of the people of the community and the expanding range of roles for people of all ages, sexes, races and backgrounds. Advertisements should also aim to reflect the diversity of ways in which responsibilities, contributions and activities are shared between men, women and children at work, at home, in families and elsewhere in the community.



It is the Authority's view that an interpretation of rule 4 which accepted that women's sexual appeal is related to, and so may be used to promote, all manner of foodstuffs, is entirely inconsistent with the tenor of those general principles.

The foregoing analysis reveals that the Authority is satisfied that the Bluebird Lite advertisement uses women's sexual appeal to draw attention to an unrelated product. However, the part of rule 4 under consideration prohibits the portrayal of women "in a manner which uses sexual appeal simply to draw attention to an unrelated product." TVNZ's Complaints Committee was of the view that the advertisement's use of farce and its lighthearted intent and effect precludes it from infringing that prohibition.

The Authority acknowledges that farce, lightheartedness and all other facets of humour are, like beauty, matters of personal taste to a very large extent. And that is why, in the Authority's view, the part of rule 4 under consideration would be rendered virtually meaningless if it were interpreted so that it could not be infringed by an advertisement which employs "humour" in its use of women's sexual appeal to draw attention to an unrelated product: it would be unacceptable if every advertisement which uses women's sexual appeal to draw attention to an unrelated product was not in breach simply because it also employed someone's conception of humour in the process.

In the Authority's view, a commonsense interpretation of the part of rule 4 under consideration (with particular regard to its use of the word "simply") reveals that it is not the manner in which women's sexual appeal is used which is material but the degree to which it is used. Thus, an advertisement which relies little upon women's sexual appeal to draw attention to an unrelated product may not infringe the prohibition under consideration. However, that is not the case here: the Bluebird Lite advertisement does not rely upon women's sexual appeal in any small degree. In the Authority's view, the dominant impression gained from the advertisement is that it relies principally upon women's sexual appeal to promote the product.

A similar reasoning process leads the Authority to reject the view, apparently relied upon by the Complaints Committee, that in assessing an advertisement's compliance with any of the Codes governing advertising standards, the advertiser's professed intention is an extenuating factor. In the Authority's view, the intention of an advertisement as stated by its creators cannot override its effect. Thus, if the professed intention of an advertisement does not clearly coincide with the effect which it may reasonably be expected to have upon viewers, its effect must be assessed against the rules contained in the Codes of Practice. With regard to advertisements portraying people, the Authority notes that if advertisers and broadcasters pay close attention to the egalitarian spirit of the general principles of the Code for the Portrayal of People in Advertising, the risk of there being any ambiguity between an advertisement's intention and effect will be avoided.

The result of the Authority's reasoning is its conclusion that the Bluebird Lite potato chip advertisement does use women's sexual appeal simply to draw attention to an unrelated product. Whether it does so in a "humorous" fashion or not does not require



the Authority's decision. However, as TVNZ observed in its last correspondence upon the complaint, humorous or satirical treatment of people in advertisements is subject to rule 6 of the Code for the Portrayal of People in Advertising which condones such treatment except when it encourages "intolerance, prejudice and bigotry". The Authority notes that the interpretation of these words will be assisted by the statements of general principle contained in the Code.

For the reasons set forth above, the Authority upholds the complaint.

Section 13(1) of the Broadcasting Act 1989 empowers the Authority, at its discretion, to make one or more specified orders when it has decided that a complaint referred to it under s8 of the Act is justified in whole or in part. Section 21(1)(f) of the Act empowers the Authority to develop and issue codes of broadcasting practice of the kinds specified in s21(1)(e). One type of code within the Authority's power to issue concerns the portrayal of persons.

With regard to the present complaint, the Authority declines to make an order under s13(1) of the Broadcasting Act for the reason that none is appropriate at this stage to the breach of the Codes of Broadcasting Practice for Television which has occurred. In the Authority's view, the appropriate result of its decision is for the Bluebird Lite advertisement not to be broadcast in future. If broadcasters act to secure that result the matter may rest there. If, however, a fresh complaint about the advertisement is referred to the Authority, the circumstances might then be ripe for the making of an order under s13(1) and/or the exercise of the Authority's unilateral power to issue codes of broadcasting practice.

"Exploitive and degrading" advertising

As a result of the decision given above it is unnecessary for the Authority to consider the complaint in the light of the first part of rule 4 of the Code for the Portrayal of People in Advertising which prohibits the employment of sexual appeal "in a manner which is exploitive and degrading of any individual or group of people in society to promote the sale of products or services". However, the Authority takes this opportunity to comment upon some of the matters which helped persuade the Complaints Committee that this part of rule 4 is not infringed by the Bluebird Lite advertisement.

The Complaints Committee's reasons for not upholding Dr Ritchie's complaint under the first part of rule 4 may be summarised as follows:

- the advertisement exploits a woman's wiles in a farcical way, to achieve a weightwatchers-type image;
- the advertisement uses a variety of shots apart from those of the woman's backside;



- some of the shots of the woman's backview are justified by the fact that on one of the rear pockets of her jeans is a patch resembling a packet of Bluebird Lite potato chips;
- it is doubtful whether anyone would suggest it to be denigrating to men if the wearer of the jeans had been an attractive young man of athletic build;
- the advertisement is a fun advertisement of a nature not uncommon to television advertising worldwide;
- it misrepresents the intention and effect of the advertisement to claim that it exploits sexual appeal or emphasis.

The Authority notes that had it been necessary for it to determine the complaint under the first part of rule 4, it may not have been persuaded by some, at least, of the reasons which persuaded the Committee not to uphold the complaint. In particular, the Authority is critical of the reasoning that a direct parallel can be drawn between an advertisement which focuses upon an "attractive young man" and one which focuses upon an "attractive young woman". In the Authority's view, the Code for the Portrayal of People in Advertising itself recognises that portrayals of women in advertisements must be treated with special sensitivity. The statements in the second and third general principles of the Code, insofar as they exhort advertisements to depict members of the community fairly, regardless of sex, and to reflect the diversity of the people in the community and the expanding range of roles for people of both sexes, are consistent with the awareness which is burgeoning in New Zealand society that women have, traditionally, "come off second-best" in media portrayals. Further, rules 1, 2, 4 and 5 of the Code all contain statements more likely to be, or expressed to be, relevant to the portrayal of women rather than of men.

In the Authority's view, the fact that the Code acknowledges that women and men do not stand in equal positions when it comes to media portrayals of their physical attributes, talents and diversity, rebuts the reasoning, relied on by the Complaints Committee, that because an advertisement which focuses upon a man's body may not evoke criticism, one which focuses upon a woman's body should be similarly received.

Next, the Authority repeats its view, elaborated earlier, that the professed intention of an advertisement cannot override the effect which it may reasonably be expected to have upon viewers.

Finally, the Authority records its adverse reaction to the argument that some of the rear-view shots of the woman in the Bluebird Lites advertisement are justified by the fact that one of the back pockets of her jeans bears a patch resembling a packet of potato chips. That argument overlooks, or accepts, the contrivance that produced that fact. In the Authority's view, the placement of a product name, logo or the like upon a person's body or clothing should not be taken as automatically strengthening the claim that an advertisement does not breach the provisions of the Code for the Portrayal of People in Advertising.



Procedure

Dr Ritchie's complaint has highlighted some procedural issues of significance to broadcasters' and the Authority's future treatment of formal complaints. The issues spring from the complainant's failure to identify with precision the grounds for her formal complaint.

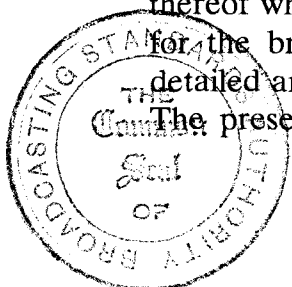
Section 4(1) and (2) of the Broadcasting Act 1989 specify broadcasters' obligations with regard to programme standards. Section 4(1) is of primary interest. It provides:

- 4(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -
- (a) The observance of good taste and decency; and
 - (b) The maintenance of law and order; and
 - (c) The privacy of the individual; and
 - (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant parts of view either in the same programme or in other programmes within the period of current interest; and
 - (e) Any approved code of broadcasting practice applying to the programmes.

It is noteworthy that a formal complaint which alleges a breach of s4(1)(a) - (d) will be "complete", save only for supplying facts which support the allegation. By contrast, a formal complaint which alleges a breach of s4(1)(e) requires further "technical" information: the identification of the code(s) and rule(s) thereof alleged to have been breached.

The question raised by the present complaint concerns the appropriateness of a broadcaster's actions in "interpreting" a formal complaint which does not specify the grounds upon which it is made, and then proceeding to determine it according to that interpretation.

In the Authority's view, such conduct by broadcasters will often be uncontroversial. For example, a complaint which did not expressly state that it was based upon s4(1)(a) of the Broadcasting Act 1989 would ordinarily be worded in such a way that it would be plain to the broadcaster that the standards of "good taste and decency" were being called into question. However, when s4(1)(e) is expressly, or implicitly, the grounds for a formal complaint yet the complainant does not identify the code(s) and rule(s) thereof which are alleged to have been breached, it may not be such a simple matter for the broadcaster to divine the gist of the complaint: the codes are lengthy and detailed and, as with all written statements, may be capable of various interpretations. The present complaint illustrates this point only too well: TVNZ was clearly of the



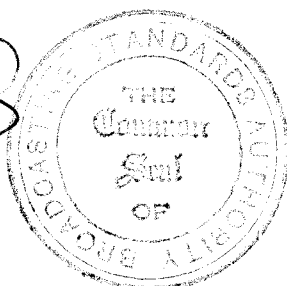
opinion that Dr Ritchie's complaint related only to rule 4 of the Code for People in Advertising; the Authority and Dr Ritchie - when it was put to her - were of the opinion that rule 2 of that Code might also have been relevant to her complaint.

Therefore, in the Authority's view, when a formal complaint expressly or implicitly alleges a breach of a broadcasting code of practice but fails to specify the code(s) or rule(s) upon which the complaint is based, the broadcaster should give the complainant the opportunity to elaborate, in terms of the codes, upon the precise nature of the complaint. Otherwise, the broadcaster's actions of determining the complaint according to its own interpretation of it may lead the Authority, upon a referral of the complaint to it, to exercise its power under s13(1)(c) of the Broadcasting Act 1989, requiring the broadcaster to reconsider the complaint in accordance with the complainant's own view of its basis (or bases) in the codes. (The Authority advises that the Codes of Broadcasting Practice for Radio and Television are available for purchase from its Wellington office. As well, the Codes may be inspected at the Authority's office and most public libraries and may be available for inspection at broadcasters' premises.)

It must be stated, however, that the Authority is convinced that TVNZ's actions with respect to Dr Ritchie's complaint were done in good faith, out of a genuine and commendable desire to process a serious complaint without delay.

Signed for the Authority


Iain Gallaway
Chairperson



8 March 1990