

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 91/92

Dated the 19th day of November 1992

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

An advertisement for a competition called "Break Out the Name Game" was broadcast by TV3 Network Services Ltd at about 8.15pm on 7 July. The advertisement was sponsored by DB Bitter beer and the competition was for a name for the Auckland Rugby League team.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to TV3 that, under the rules applicable to liquor advertising, the advertisement was a liquor one and not a sponsorship one. It was a liquor advertisement, GOAL continued, because the wording in the television advertisement for DB Bitter imitated wording in recent print advertising for that beer and, further, as a liquor advertisement, it breached the rule prohibiting such advertisements before 9.00pm.

On the basis that the wording in the television advertisement did not imitate the wording in print advertisements for DB Bitter beer beyond the common use of two standard English words, TV3 maintained that the advertisement was a sponsorship one. Dissatisfied with TV3's response, 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 to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

A competition for members of the public to suggest a name for the Auckland Rugby League team was called "Break Out the Name Game". Dominion Breweries (DB) were the sponsor of the competition and, at the same time, were running an advertising campaign for a new beer under the slogan "Break Out the Bitter".

GOAL complained to TV3 that a broadcast advertisement for the competition, allegedly a sponsorship advertisement, breached Rule E(ii) of the Schedule to the Liquor Advertising Rules for Radio and Television. It reads:

- 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:
- (i) ...
 - (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) ...

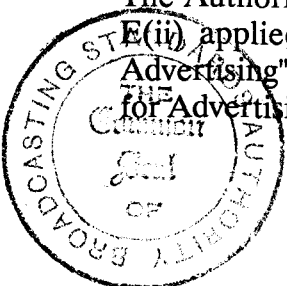
Sponsorship advertisements which do not comply with this requirement take on the status of liquor advertisements.

By broadcasting an advertisement which used the slogan "Break Out the Name Game", GOAL continued, the wording imitated the slogan "Break Out the Bitter" used in print advertisements and, consequently, the broadcast amounted to liquor rather than sponsorship advertising. As a result, the broadcast of the advertisement at 8.15pm breached Rule C of the Schedule which prohibits liquor advertisements before 9.00pm.

TV3 argued that the advertisement was a sponsorship one. The only similarity with the DB Bitter liquor advertisements, it said, was the use of the words "break out" and it added that it:

was unable to determine that these two standard English words, used in the context of the proper and commonly accepted name of a competition, and with no similarity in visual presentation, could amount to imitation of a liquor advertisement in terms of the Code.

The Authority considered first whether the reference to a liquor advertisement in Rule E(ii) applied to a print advertisement. On the basis that the definitions of "Liquor Advertising" and "Liquor Advertisement" used in the Rules are laid down in the Code for Advertising Alcoholic Beverages and as that Code applies to all advertising (print and



broadcasting), the Authority accepted that the reference to a liquor advertisement in Rule E(ii) referred to both print and broadcast advertisements.

The Authority next considered whether the words "break out" were used in the television advertisement in imitation of the print advertisement. The Authority noted that DB has used the slogan "break out" in its promotion of DB Bitter beer and, as TV3 pointed out, it also noted that they are two standard English words. Nevertheless, their use in the phrase "Break Out the Name Game" is not standard English usage. The Authority considered a number of phrases which could have introduced the competition in question in a more informative and, possibly, more effective manner. Although the words "break out" are two standard words, the Authority was of the opinion that their use in the name of the competition was contrived. Furthermore, the Authority decided, their use was intended to imitate the slogan used in other advertisements to promote DB Bitter beer. As a result, the Authority concluded that the advertisement broadcast by TV3 breached Rule E(ii). Having breached that Rule, the Authority agreed with GOAL that the advertisement was a liquor one, not a sponsorship one, and, by being broadcast at 8.15pm, it breached Rule C of the same code.

The Authority next examined the advertisement broadcast by TV3 to see if it also breached Rule E(ii) on the basis that the visual elements portrayed imitated liquor advertisements as well. A five pointed gold star was the common feature and Rule E(ii) states that "packaging" may not be imitated in liquor and sponsorship advertisements. In deciding whether the portrayal of the star breached the standard, the Authority turned to the definition of "Liquor Packaging" in the Code for Advertising Alcoholic Beverages. It states that Liquor Packaging:

means a substantive representation of a liquor bottle, can, cask or other pack, and shall not be deemed to mean a specific label element or logo.

As the representation of the star is a specific label element and not a representation of a liquor bottle or pack, the Authority decided that its portrayal did not breach the Rule.

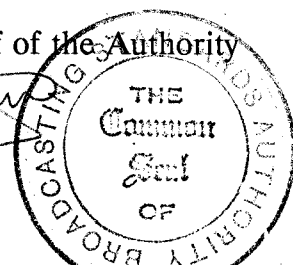
For the reasons set forth above, the Authority upholds the complaint that the use of the phrase "Break Out" in an advertisement purportedly a sponsorship one, broadcast by TV3 Network Services Ltd on or about 8.15pm on 7 July 1992 breached Rule E(ii) of the Schedule of the Liquor Advertising Rules for Radio and Television. Consequently, the advertisement was a liquor one which, because of the time of its broadcast, breached Rule C of the same schedule.

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 for the following reasons: first, the advertisement is unlikely to be broadcast again as the Auckland Rugby League team has been named; secondly, it is the first occasion that the Authority has been required to rule on a complaint under Rule E(ii); and thirdly, the rule is stringent in its requirements and the Authority regards this breach as a relatively minor one.

Signed for and on behalf of the Authority

Iain Gallaway
Iain Gallaway
Chairperson

19 November 1992



Appendix

GOAL's Complaint to TV3 Network Services Limited

In a letter dated 9 July 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 DB Bitter beer broadcast at about 8.15pm on 7 July.

Although the advertisement was purportedly a sponsorship one, the use of the words "Break Out" imitated recent print advertising for DB Bitter. As it thus breached the requirement for a sponsorship advertisement in Rule E(ii) of the Schedule to the Liquor Advertising Rules, it was instead a liquor one and, by being broadcast at 8.15pm, it breached Rule C of the same Rules.

TV3's Response to the Formal Complaint

TV3 advised GOAL of its Complaint Committee's decision in a letter dated 5 August.

TV3 expressed no doubt that the advertisement was a sponsorship one as defined by the Codes. It continued:

The sponsor was DB Bitter and the event sponsored was a competition for members of the public to devise a name for the Auckland Rugby League team. The competition was called the Break Out The Name Game.

Your complaint alleges that the sponsorship advertisement used the words "Break out the bitter". It did not. If it had done your complaint may have had some substance. In fact the only similar reference actually used was related to the name of the competition.

Nevertheless, even if the words "Break Out the Name Game" could be considered to imitate other liquor advertisements in contravention of Rule E(ii), TV3 said that the only common visual or spoken feature was the phrase "break out". That similarity, TV3 argued, did not breach the standard.

TV3 concluded:

1. Your original complaint was misconceived and could not be upheld.
2. Even if your complaint had correctly identified just the words "break out" as being used in both the liquor and sponsorship advertisements your complaint would not have been upheld.



GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TV3's response, Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority on 14 August 1992 under s.8(a) of the Broadcasting Act 1989.

A recent print advertisement for DB Bitter was enclosed. It began with the words "Break Out the Bitter" and GOAL continued:

The words "Break Out" are used. TV3 claims that these two words are "standard English words" and seems to be implying that the use of these two standard English words in close conjunction was purely fortuitous and that there was no conscious imitation of the print advertising.

This is an insult to my intelligence and if TV3 repeats such a statement to the Authority it will insult the Members of the Authority.

Although he could not recall the television advertisement precisely, Mr Turner expressed his belief that it also included an imitation of the five pointed star which featured on the print advertisements. GOAL maintained that as the sponsorship advertisement breached Rule E(ii), it was a liquor advertisement which, because of the time of the broadcast, breached Rule C.

TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 17 August and, after a reminder dated 30 September, TV3's response is dated 2 October.

Enclosing a copy of the day's As Run log which recorded that the advertisement was screened at 6.36pm, TV3 said that it had sought advice from the Television Commercial Approvals Bureau when GOAL's complaint was first received and maintained its belief that the advertisement was a sponsorship one, not a liquor one.

GOAL's Final Comment to the Authority

When asked for a response to TV3's comment, in a letter dated 7 October Mr Turner on GOAL's behalf argued that TV3 had not addressed the grounds of his complaint. He maintained that the use of the words "break out" on the television advertisement imitated the wording in the print advertisements and, consequently, as a liquor advertisement it failed to comply with the requirement in Rule C about the hours when liquor advertisements may be broadcast on television.

Referring to a complaint about another advertisement which the Authority upheld, Mr Turner remarked that he was not impressed with the opinion from the Television Commercial Approvals Bureau.

