

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 92/92

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
TELEVISION NEW ZEALAND
LIMITED

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

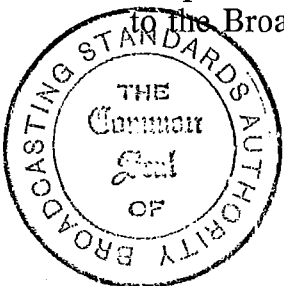
DECISION

Introduction

Scenes from the All Blacks' dressing room after the team's victory over South Africa were shown on an item on the *Holmes* programme on 17 August 1992. The item included an interview with the captain of the All Blacks (Sean Fitzpatrick). Many signs promoting "Steinlager" beer were apparent on the walls of the dressing room.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to Television New Zealand Ltd, as the broadcaster, that the visibility of the signs breached the broadcasting standard which requires that the incidental promotion of alcohol be minimised. Particular concern was expressed about the sign which was highly visible while Sean Fitzpatrick was being interviewed.

Arguing that the item had focused on the players immediately after the team's victory and that the impact of the signage was minimised as much as possible, TVNZ declined to uphold the complaint. Dissatisfied with that 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.

An item on the *Holmes* programme on 17 August 1992 included scenes from the All Blacks' dressing room in Johannesburg after the team's test win over South Africa. Part of the item involved an interview with the All Black captain (Sean Fitzpatrick) while positioned alongside a sign for "Steinlager" beer. The bulk of the item involved Mr Holmes interviewing from the studio two members of the All Black team on their arrival at Auckland airport on their return home.

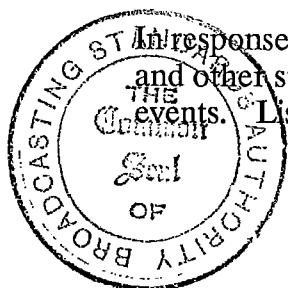
GOAL complained to TVNZ that the visibility of a number of "Steinlager" beer signs in the All Blacks' dressing room breached the rules against the incidental promotion of liquor in standard 27(b) and (c) of the Television Code of Broadcasting Practice. It reads:

- 27 Broadcasters will ensure that the promotion of liquor which is incidental to a programme is minimised and in particular:
- (a) ...
 - (b) Will not focus during any programme on any particular advertising signage, logo or any other sound or visual effect which promotes liquor.
 - (c) Will ensure in any live, on-location interview of a person or persons that the use of apparel or background signage which bears liquor promotion messages or logos of liquor advertisers (individuals or companies which make, market or sell liquor) is minimised.
 - (d) ...

In response, TVNZ argued that the focus had been on the players, rather than the "Steinlager" signs, and that the impact of the signs had been minimised as much as possible.

When referring the complaint to the Authority, Mr Turner on GOAL's behalf maintained that few people would be allowed into the team's dressing room and, as the advertising signs were displayed for the purposes of the television cameras, it was "contrived" advertising. He referred specifically to the visual of the sign next to Sean Fitzpatrick when he was being interviewed, asking why had he not been requested to move 30 centimetres to minimise the impact of the sign.

In response to these concerns, TVNZ said advertising had been placed in dressing rooms and other strategic places for many years in order to be "caught" by news crews covering events. Listing a number of points, including the need for hurried decisions by the



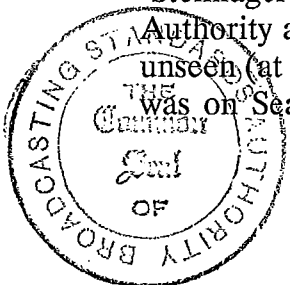
television crew, TVNZ explained why it believed that it had been impractical to ask Sean Fitzpatrick to move as GOAL had suggested.

Standard 27 applies to the promotion of liquor which is incidental to a programme and the Authority examined whether the broadcast breached paragraphs (b) and (c) of that standard. Beginning with 27(c), the Authority noted that it refers to any "live, on-location interview". The broadcast complained about did not comply strictly with this criterion in that it was a delayed broadcast of a live interview. That raised the question of whether the interview could have been edited to remove the "Steinlager" sign which was highly visible on the screen while Sean Fitzpatrick was being interviewed. However, rather than resolve the technical question of what could be achieved by editing, the Authority observed that the expression "live, on-location interview" in paragraph (c) is used in contrast to a "pre-arranged non-advertising programme, such as an interview in a studio or at an event, panel or quiz show" in paragraph (d). Thus, although the broadcast did not comply strictly with paragraph (c), paragraph (d) was not applicable and, taking the spirit of the standard into account (specifically referred to in standard 27), on this occasion the Authority treated the circumstances of the broadcast as one to which paragraph (c) applied. That approach was also taken by TVNZ.

In assessing whether the broadcast of the background signage was minimised, the Authority examined on one hand the signs apparent during the shots of the team relaxing in the dressing room and, on the other, the shots of the interview with Sean Fitzpatrick. In view of the profusion of signs which adorned the dressing room, as seen during the shots of the team members resting after the game, the Authority took into account the practicalities explained by TVNZ and agreed that the portrayal of the signs during the panning shots could not be minimised.

That consideration did not apply to the sign blatantly apparent during the interview with Sean Fitzpatrick. In that case the interview began with the full sign being shown and taking up a reasonable portion of the shot screened. In that situation, while acknowledging TVNZ's expressed concern to show what appeared to be a minor injury to Sean Fitzpatrick's face and the extensive display of signs paraded by the liquor company in order to gain incidental coverage, the Authority decided that it would not have been unreasonable to ask Sean Fitzpatrick to move a little before beginning the interview. Moreover, the request would not have been a hardship for an exhausted player as, from Sean Fitzpatrick's clothes and manner, it appeared that he may have showered and dressed after the game and before the interview. Notwithstanding the practicalities listed by TVNZ, the Authority decided that the portrayal of the sign on this occasion meant that the incidental promotion of liquor had not been minimised.

Reverting to the complaint under paragraph (b), the Authority considered carefully the requirement that a broadcast will not "focus" on any particular signage. While the standard was not breached by the broadcast of shots which panned around the dressing room, the Authority asked the question whether the broadcast focused on the "Steinlager" sign seen in full at the beginning of the interview with Sean Fitzpatrick. The Authority agreed that the primary emphasis was on the captain and his answers to the unseen (at that stage) interviewer's questions. However, although the primary emphasis was on Sean Fitzpatrick and his remarks and he occupied about half the screen, the




other half was dominated by the "Steinlager" sign. In those circumstances, the Authority concluded that the focus on the sign was virtually equal to that of the focus on Sean Fitzpatrick.

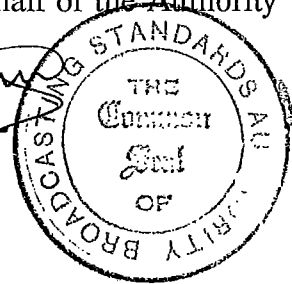
Standard 27 is designed to "minimise" the incidental promotion of liquor. Standard 27(a) refers to "contrived" incidental liquor promotion and although it was discussed both by GOAL and TVNZ at various times, it was not raised by GOAL in its initial complaint to TVNZ and, accordingly, has not been considered by the Authority. Although TVNZ reported that "commercial companies have sought to place signage depicting brand names and logos in positions" where they are likely to be "caught" by news crews, the Authority returns to the paragraphs under which the complaint was laid. Paragraphs (b) and (c) of standard 27 do not deal with the broad issue of the incidental promotion of commercial companies in news events. It requires broadcasters only to ensure that the incidental promotion of liquor is minimised. The requirement in the standard acknowledges the practicalities involved in live, on-location broadcasting but it imposes rules on broadcasters which, because of the concern about liquor promotion contained in the Broadcasting Act 1989 (in s.21(1)(e)(v)), the Authority expects to be followed with care by broadcasters.

The Authority upholds the complaint that the broadcast by Television New Zealand Ltd of an item on the *Holmes* programme on 17 August 1992 did not minimise the incidental promotion of liquor, and accordingly, breached standard 27(b) and (c) of the Television Code of Broadcasting Practice.

Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act 1989. As it is the first complaint under paragraphs (b) and (c) of standard 27 that has been upheld, it does not intend to do so. However, having advanced in this decision its interpretation of the responsibilities under these provisions, the Authority expects broadcasters to meet their responsibilities under this provision fully in future broadcasts.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



19 November 1992

Appendix

GOAL's Complaint to Television New Zealand Limited

In a letter dated 18 August 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about the incidental liquor advertising shown on an item on the *Holmes* programme on 17 August.

The item showed the All Blacks in their dressing room in Johannesburg after their victory in the test match against South Africa and, GOAL said, the visibility of a number of "Steinlager" beer signs breached the rules against incidental liquor promotion in standard 27(b) and (c) of the Television Code of Broadcasting Practice. GOAL also argued that the presence of the signs were contrived. Noting that the All Black captain had stood just to the right of a "Steinlager" sign while being interviewed, GOAL said that the requirement to minimise incidental advertising could have been achieved by asking him to move about 30 centimetres to the left.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 10 September 1992.

Taking into account the requirements in standard 27(b) and (c), TVNZ disputed that there had been any focus on the "Steinlager" signage. The focus, it continued, had been on the players and, because of that concentration, the impact of the "Steinlager" signage had been minimised as much as possible.

TVNZ also referred to the acknowledgment in the standard that incidental promotion could occur when broadcasters had little control. That was the situation in the item complained about, TVNZ stated, as the signage was put up as part of a sponsorship deal between "Steinlager" and the NZ Rugby Football Union. TVNZ could not order its removal while it considered that an interview in the dressing room was appropriate to capture the team's reaction to its victory.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 15 September Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989. Mr Turner began:

The shots inside the All Black's dressing room showed that the walls of the dressing room were liberally adorned with Steinlager advertising. My guess is that very few people penetrate All Black dressing rooms and that the Steinlager advertising is not put up so that it can be seen by people in the dressing room. It is put up so that it can be seen on television. In other words it is contrived".



TVNZ had not responded to the complaint about the sign next to the All Black captain and, while GOAL accepted that TVNZ could not order the removal of the signage, it could refuse to broadcast the pictures transmitted from South Africa.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 18 September and TVNZ's response, 29 September.

It began by pointing out that GOAL's initial complaint to TVNZ had alleged breaches of standard 27(b) and (c) of the Television Code while, in the referral to the Authority standard 27(a) was substituted for 27(c). Although the standard had not been cited by GOAL previously, TVNZ emphatically denied that it had connived with "Steinlager" about the signage in contravention of standard 27(a).

TVNZ continued:

The company points out that since television news was born, commercial companies have sought to place signage depicting names and logos in positions where they are likely to be "caught" by news crews covering legitimate news events.

This was one such occasion. Television New Zealand had nothing to do with the placement of the signage.

It then detailed 11 points why GOAL's suggestion to ask the All Black captain to move was impractical, beginning:

This is not an occasion when hours are spent preparing faultless lighting, immaculate sound, and finely framed visuals. Decisions are made on the move, in a split second.

After explaining the practicalities which included the presence of numerous advertising signs in a room packed with people, TVNZ repeated that the dressing room was the appropriate place to record the team's reactions to the test victory. It concluded by giving a brief summary why the item did not breach standards 27(a), (b), or (c).

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 2 October Mr Turner on GOAL's behalf said the reference to standard 27(a) was an error. He persisted with GOAL's standard 27 (c) complaint which had been raised in the initial complaint to TVNZ.

He described the close up shot of the All Black captain as his main complaint and could not accept that Sean Fitzpatrick he could not have asked to move 30 centimetres to obscure some "Steinlager" advertising.

