

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 141/93
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Dated the 4th day of November 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of complaints by

GROUP OPPOSED TO
ADVERTISING OF LIQUOR
of Hamilton (2 complaints)

and

ALCOHOL HEALTHWATCH
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

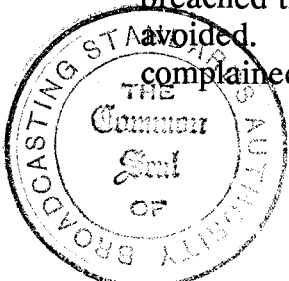
I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Summary

A three minute commercial break at 9.50pm during TV1's *Prime Time* on 13 July 1993 opened and closed with a 15 second Lion Breweries advertisement for Guinness. It also contained five other 30 second commercials which included one for Montana Wines and one for Grants Whisky.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to Television New Zealand Ltd that four liquor advertisements in one break breached the standard which required that the saturation of liquor promotions must be avoided. The Health Promotion Advisor for Alcohol Healthwatch, Ms Morgan, complained to Television New Zealand Ltd on the same basis.



While noting that the liquor commercials were not broadcast consecutively, TVNZ acknowledged that it had broken its own house rules by allowing more than two liquor advertisements in one commercial break and, furthermore, that it had not observed the spirit of the Code for Advertising Liquor. However, as the broadcasts had not breached the technical requirements of the standard, the complaints were not upheld. Nevertheless, internal action had been taken to ensure that such a number of liquor advertisements were not again broadcast during one commercial break.

Dissatisfied with TVNZ's decision not to uphold the complaints as a breach of the standard, both complainants referred their complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

On a separate occasion, on 3 September 1993, three liquor advertisements were included in a commercial break broadcast about 11.05pm during the screening of a programme on TV2 entitled *Ruby Takes a Trip*.

On behalf of GOAL, Mr Turner complained to Television New Zealand Ltd that three liquor promotions in one commercial break breached the saturation standard. Noting that the issue was similar to that raised in GOAL's earlier complaint, TVNZ again pointed out that the commercials were not shown consecutively. Arguing in addition that saturation could not be established during the "viewing period" which comprised one commercial break, it declined to uphold the complaint.

Dissatisfied with this decision as well, Mr Turner on GOAL's behalf also referred this complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Decision

The members of the Authority have viewed both commercial breaks to which both complaints referred and they have read the correspondence (summarised in the Appendices). As is its practice, the Authority has determined the complaints without a formal hearing.

These complaints referred to two distinct broadcasts. The first was a commercial break during TV1's *Primetime* on 13 July which contained four liquor advertisements out of the seven commercials screened and which amounted to one half (1½ minutes) of the length of the break (3 minutes). The second complaint referred to a commercial break during a programme on TV2 after 11.00pm on 3 September which contained three liquor advertisements out of seven which also amounted to one half (1½ minutes) of the length of the break (3 minutes).

The complainants alleged that the broadcasts breached the standard controlling the saturation of liquor promotion now contained in standard A1 of the Programme Standards for the Promotion of Liquor. It provides:



- A1 **Saturation** of liquor promotions, separately or in combination, must be avoided. In addition, liquor advertisements shall not be broadcast consecutively in any one break.

The Code also includes a definition of the term saturation which reads:

"Saturation" refers to a degree of exposure which gives the impression that liquor promotion is dominating that viewing or listening period.

In its complaint, Alcohol Healthwatch referred to a recent submission from TVNZ to the Authority when it reviewed the standards applicable to alcohol advertising on television. In that submission, TVNZ stated that it would not permit more than two alcohol advertisements in any one commercial break or more than four minutes in total in any one hour. When it referred its complaint to the Authority, Alcohol Healthwatch argued that the liquor advertisements could well have had more of an impact than the other commercials as two of them were the first and last respectively during the break. TVNZ did not respond to the point. It was one for which the Authority had some sympathy but, in view of its decision, it was not required to determine.

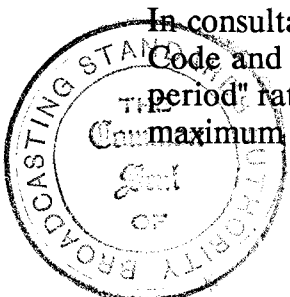
The aspect of the complainant's argument about TVNZ's recent submission was picked up by TVNZ in its response to the complaints about the commercial break during *Primetime* on 13 July. It acknowledged that its own rules had been broken by broadcasting more than two liquor advertisements in one break and advised that the Company's Sales and Marketing Division had been asked to ensure that there was no repetition in future of that amount of liquor advertisements in any one commercial break. While it described the broadcast as a breach of the spirit of the Code, TVNZ concluded that the broadcast had not amounted to a breach of the standard.

In responding to GOAL's complaint about the commercial break on 3 September which contained three liquor advertisements, TVNZ neither referred to its earlier submission to the Authority nor did it concede a technical breach. Rather, it expanded on a point raised in its response to the Authority on the earlier complaints. Noting that the "saturation" definition refers to a "viewing period", TVNZ argued that this description did not apply to a three-minute commercial break. A "viewing period", it continued, was the period of time for which viewers make a conscious decision to watch television:

Viewers turn on the television sets to watch programmes not to watch three-minute commercial breaks.

The central point raised by these complaints was the wording in the definition of "saturation" contained in the Code which states that liquor promotion must not dominate a "viewing period". The Authority was required to decide whether or not a three-minute commercial break was such a period.

In consultation with broadcasters, the Authority was involved in the preparation of the Code and consequently is aware of the reason why the definition uses the term "viewing period" rather than referring to a "programme". Although a programme is probably the maximum size of a "viewing period", the Authority recalled that the term "viewing period"



had been chosen to allow segments of a shorter duration than an entire programme to be considered as a "viewing period" when appropriate. The Authority would not accept that an arbitrarily selected period within a programme of perhaps 2, 5 or 10 minutes could be defined as a "viewing period". However, it was adamant that a "viewing period" could be the entire programme or discrete sections such as each portion between commercial breaks or, as occurred with these complaints, the commercial breaks themselves.

Agreeing that a three-minute commercial break could be a "viewing period" for the purposes of standard A1, the Authority then considered whether the extent of the liquor promotions broadcast on each occasion complained about amounted to saturation in contravention of standard A1. TVNZ acknowledged that the commercial break broadcast during *Primetime* on 13 July amounted to a breach of the spirit of the standard and the Authority, in view of its definition of a "viewing period", concluded in addition that the broadcast was a breach of the substance of the standard.

The complaint regarding the broadcast on 3 September referred to three rather than four of the seven advertisements screened in one break although the amount of time involved in liquor promotion (1½ out of 3 minutes) remained the same. In those circumstances, the Authority decided that liquor promotion also dominated that viewing period and that this broadcast also breached standard A1.

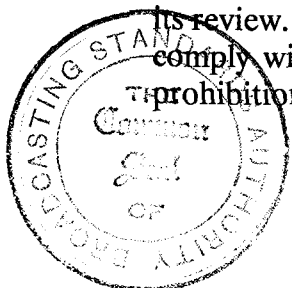
For the reasons set forth above, the Authority upholds the complaints that the broadcast of liquor advertisements by Television New Zealand Ltd during specific commercial breaks on 13 July and 3 September 1993 breached the prohibition on the saturation of liquor promotions in standard A1 of the Programme Standards for the Promotion of Liquor.

Apart from the prohibition on broadcasting liquor advertisements consecutively, neither the standard nor the definition states the amount of liquor promotion which might give an impression of saturation in breach of the standard. Because of the number of different situations which could arise, the standard when promulgated avoided referring to finite numbers. However, following these complaints and particularly the matters raised by the complainants and the broadcaster, the Authority is prepared to comment specifically on the number of liquor advertisements which can be included in a normal commercial break without raising the possibility of breaching the standard.

In suggesting the following guidelines, the Authority refers back to TVNZ's submission to the Authority at the time the standards were examined and which was raised by Alcohol Healthwatch in its complaint. At that time TVNZ wrote:

In practice TVNZ does not permit more than two alcohol advertisements in any one advertising break or more than 4 minutes in total each hour.

The Authority accepted this submission implicitly and took it fully into consideration in its review. It is firmly of the view that should TVNZ, or any other television broadcaster, comply with this practice in normal situations, it is unlikely to breach the saturation prohibition but that more than two liquor advertisements in any one commercial break

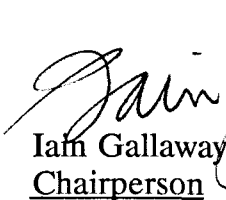


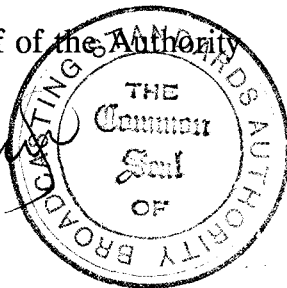
will be in breach.

The Authority also noted that after determining the first two complaints about the broadcast on 13 July, TVNZ advised the complainants on 19 August that its Sales and Marketing Department had been asked to ensure that there was no repetition. Although the second complaint involved only three liquor advertisements out of seven commercials, rather than four, the length of the advertisements, was the same (1½ minutes out of 3) and it would appear that despite the Complaints Committee's request, TVNZ's house rules were contravened for a second time. As a result the Authority would record its disappointment that the broadcast on 3 September took place, in addition to its concern that TVNZ had not complied with its representations to the Authority.

Having upheld a complaint, the Authority may impose an order under s.13(1) of the Broadcasting Act. Because this is the first occasion that the Authority has been required to determine complaints about the alleged saturation of liquor promotions in one commercial break and because the decision substantially involved the interpretation of the term "viewing period", the Authority does not intend to make an order on this occasion.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



4 November 1993

Appendix IGOAL's Complaint to Television New Zealand Limited

In a letter dated 26 July 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about the amount of liquor advertising in the first commercial break in TV1's *PrimeTime* at about 9.50pm on 13 July 1993.

Four liquor advertisements in the break, he wrote, amounted to saturation advertising in contravention of standard 11 of the Code for Advertising Liquor. Although unsure whether or not the advertisements were broadcast consecutively, if they had been, he said, that was a further breach.

(The Code under which the complaint was laid has been renamed as the Programme Standards for the Promotion of Liquor following the enactment of the Broadcasting Amendment Act 1993. The standards have been renumbered and the one under which the complaint was laid is now standard A1. The new name and number has been used in the Authority's decision.)

TVNZ's Response to the Formal Complaint

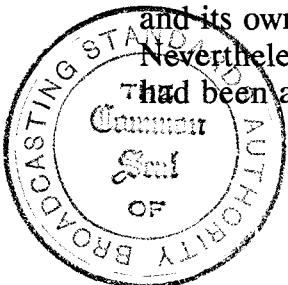
TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 19 August 1993. It noted that the Code defined saturation as a "degree of exposure which gives the impression that liquor promotion is dominating the viewing period".

It listed the advertising log for the break on 13 July:

- 15" Lion Breweries (Draught Guinness)
- 30" Cussons Soap
- 30" Montana Wines
- 30" General Motors
- 30" Grants Whisky
- 30" Energy Efficiency
- 15" Lion Breweries (Draught Guinness)

It also recalled its recent submission to the Broadcasting Standards Authority when reviewing the standards that it had said that TVNZ did not allow more than two alcohol advertisements in any one commercial break or more than four minutes in total each hour.

Noting that the advertisements were for separate products and not broadcast consecutively, TVNZ said that while the spirit of the Code had not been observed and its own internal rules had been contravened, a technical breach had not occurred. Nevertheless, because of its concern, the Chairperson of the Complaints Committee had been asked to speak with the company's sales staff to ensure that there was no



repetition. TVNZ thanked the complainant for drawing the matter to its attention and apologised for any concern that had been caused.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 21 August 1993 Mr Turner on GOAL's behalf referred the matter to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

After asking the Authority to ignore the aspect of the complaint about the possibility of consecutive advertisements, Mr Turner referred to the definition of "saturation" and argued that because an advertising break was a discrete period, it could be described as a "viewing period". In that discrete period, he continued, there was a numerical dominance of advertisements promoting liquor and the impression of dominance was heightened because the first and last involved liquor promotion.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcasters response to the complaint. Its letter is dated 23 August 1993 and TVNZ's reply, 15 September.

TVNZ made two points:

First we do not believe that saturation can be established in such a brief time frame as a three-minute commercial break. Viewers do not turn to their television sets to watch a commercial break, they do so to watch entire programme or programmes.

It argued that this conclusion was reinforced by the implication in the definition of "saturation" that the viewing period referred to something more than a three-minute commercial break. The next commercial break in Hamilton, TVNZ added, contained two 30 second alcohol advertisements.

TVNZ continued:

The second point we make, is that Standard 11 [A1] does not restrict the number of liquor commercials which may be broadcast in any one break. It simply forbids the broadcast of consecutive liquor advertisements. This did not occur on this occasion.

In conclusion, TVNZ urged the Authority to consider the matter of saturation in the context of the entire *Prime Time* programme rather than one commercial break.



GOAL's Final Comment to the Authority

In a letter dated 20 September 1993, Mr Turner on GOAL's behalf declined the Authority's invitation to comment on TVNZ's response to the Authority.

Appendix II

Alcohol Healthwatch's Complaint to Television New Zealand Limited

In a letter dated 27 July 1993, the Health Promotion Advisor for Alcohol Healthwatch (Cherry Morgan) complained to Television New Zealand Ltd about the saturation of alcohol advertising screened in one commercial break on TV1 at 9.50pm on 13 July.

Four liquor advertisements in one commercial break, she argued, constituted saturation in breach of the standards. Furthermore, she noted that in a recent submission to the Broadcasting Standards Authority which was then reviewing the standards which applied to alcohol advertising on television, TVNZ had stated that it did not permit more than two alcohol advertisements in any one advertising break or more than four minutes in total in one hour.

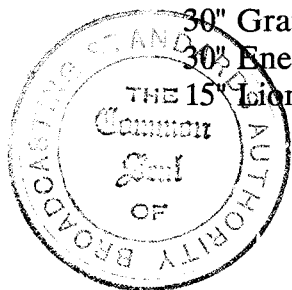
The Code under which the complaint was laid has been renamed as the Programme Standards for the Promotion of Liquor following the enactment of the Broadcasting Amendment Act 1993. The standards have been renumbered and the new name and number have been used in the Authority's decision.

TVNZ's Response to the Formal Complaint

TVNZ advised Ms Morgan of Alcohol Healthwatch of its Complaints Committee's decision in a letter dated 19 August 1993 which was similar to the one written to GOAL and dealt with in Appendix 1. It noted that the Code defined saturation as a "degree of exposure which gives the impression that liquor promotion is dominating the viewing period".

It listed the advertising log for the break on 13 July:

- 15" Lion Breweries (Draught Guinness)
- 30" Cussons Soap
- 30" Montana Wines
- 30" General Motors
- 30" Grants Whisky
- 30" Energy Efficiency
- 30" Lion Breweries (Draught Guinness)



With regard to its recent submission to the Broadcasting Standards Authority when reviewing the standards, TVNZ agreed that it had said that it did not allow more than two alcohol advertisements in any one commercial break or more than four minutes in total each hour.

Noting that the advertisements were for separate products and not broadcast consecutively, TVNZ said that while the spirit of the Code had not been observed and its own internal rules had been contravened, a technical breach had not occurred. Nevertheless, because of its concern, the Chairperson of the Complaints Committee had been asked to speak with the company's sales staff to ensure that there was no repetition.

TVNZ thanked the complainant for drawing the matter to its attention and apologised for any concern that had been caused.

Alcohol Healthwatch's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 30 August 1993 Ms Morgan on Alcohol Healthwatch's behalf referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

She repeated her complaint, adding that as the first and last advertisements were for alcohol, they probably had more impact than the others. She expressed concern that the complaint had not been upheld and about the "inadequate" action which had been taken internally.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 23 August 1993 and TVNZ's reply, 15 September.

TVNZ made two points:

First we do not believe that saturation can be established in such a brief time frame as a three-minute commercial break. Viewers do not turn to their television sets to watch a commercial break, they do so to watch entire programme or programmes.

It argued that this conclusion was reinforced by the implication in the definition of "saturation" that the viewing period referred to something more than a three-minute commercial break. The next commercial break in Auckland, TVNZ added, contained two 30 second alcohol advertisements.

TVNZ continued:

The second point we make, is that Standard 11 [A1] does not restrict the



number of liquor commercials which may be broadcast in any one break. It simply forbids the broadcast of consecutive liquor advertisements. This did not occur on this occasion.

In conclusion, TVNZ urged the Authority to consider the matter of saturation in the context of the entire *PrimeTime* programme rather than one commercial break.

Alcohol Healthwatch's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 28 September 1993 Ms Morgan on Alcohol Healthwatch's behalf maintained the view that four alcohol advertisements in one commercial break "clearly" constituted saturation in a specified viewing period.

Appendix III

GOAL's Complaint to Television New Zealand Limited

In a letter dated 4 September 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, complained to Television New Zealand Ltd that during the broadcast of the programme *Ruby Takes a Trip* on TV2 on 3 September 1993 at about 11.05pm, a commercial break contained three liquor promotions.

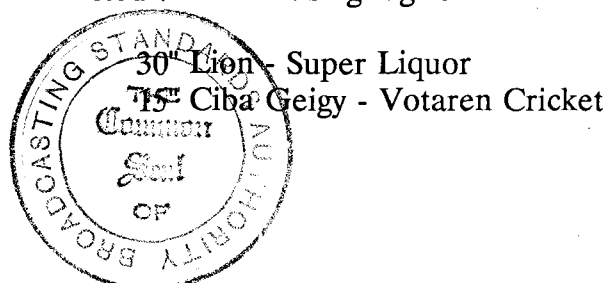
Mr Turner complained that this amounted to saturation in contravention of standard 11 of the ASA Code for Liquor Advertising.

The Code under which the complaint was laid has been renamed as the Programme Standards for the Promotion of Liquor following the enactment of the Broadcasting Amendment Act 1989. The standards have also been renumbered and the standard under which the complaint was laid is now standard A1. The new name and number has been used in the Authority's decision.

TVNZ's Response to the Formal Complaint

TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 20 September 1993.

It listed the advertising log for Hamilton for the breach on 3 September:



30" Seagram - Wilson's Whisky
 15" PDL Powerguard
 30" NZ Breweries - Lion Red
 30" Little River Band CDs
 30" Waikato Sports

Noting that the issue raised was identical to an earlier complaint made by GOAL which was still awaiting the Authority's decision, TVNZ argued that saturation could not fairly be established in such a brief time frame as a 3-minute commercial break. It pointed out that no two liquor commercials were shown consecutively and that during the programme *Ruby Takes a Trip* no impression was given that liquor promotion was dominating the screen. It declined to uphold the complaint.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's reply, in a letter dated 22 September 1993, Mr Turner on GOAL's behalf, referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

Mr Turner reiterated that in one commercial break there were three liquor advertisements. They were each separated by advertisements of only 15 seconds duration. In his view, this amounted to a breach of the first part of standard 11 of the ASA Code for Liquor Advertising (standard A1 of the renamed Code).

TVNZ's Response to the Authority

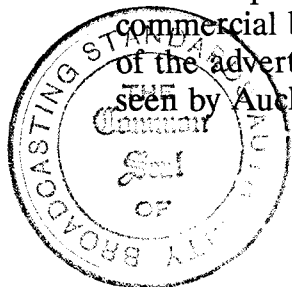
As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 24 September and TVNZ's reply, 6 October 1993.

It began by emphasising that it did not believe that saturation of liquor advertising could be fairly judged in such a short time span as a 3-minute commercial break. It wrote:

We note that the definition of saturation, carried in the BSA Programme Standards for the Promotion of Liquor, mentions a degree of exposure which gives the impression that liquor promotion is dominating that viewing period.

It suggested that "viewing period" was a period of time in which viewers made a conscious choice to watch television, and argued that viewers turn on their sets to watch programmes and not commercial breaks.

TVNZ explained that it was unable to provide the Authority with a recording of the commercial break as broadcast in the Hamilton region but confirmed that it consisted of the advertisements listed in its previous letter. It provided a tape of the break as seen by Auckland viewers.



TVNZ urged the Authority to take into consideration that viewers were at the time watching an hour and a half long programme titled *Ruby Takes a Trip*, arguing that the matter of saturation should only be considered in the context of that programme.

GOAL's Final Comment to the Authority

When asked for a comment on TVNZ's reply, in a letter dated 14 October 1993 Mr Turner stated that he had nothing further to add.

