

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 149/93

Dated the 18th day of November 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
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Summary

The following day's rugby test between the All Blacks and the Lions was dealt with in the item of sports news on TV1's *One Network News* broadcast between 6.00 - 6.30pm on Friday 11 June. The item included comments from a news conference given by two All Black selectors and the team's captain.

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd that because the three speakers were sitting under signs promoting Steinlager beer, the item breached the requirement that broadcasters must minimise the incidental promotion of liquor.

Arguing that it had no control over the location of the news conference but that it had minimised the incidental promotion of liquor as much as possible, TVNZ declined to uphold the complaint. Dissatisfied with TVNZ's decision, on GOAL's behalf Mr Turner referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

For the reasons given below, the Authority declined to uphold the complaint.



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.

The first rugby test between the All Blacks and the Lions in 1993 was played in Christchurch on Saturday 12 June. A preview including comments from the management of both teams was broadcast as an item on *One Network News* between 6.00 - 6.30pm on Friday 11 June. The segment involving the New Zealand team showed two selectors sitting down at a table where the team's captain was already seated. On the wall behind them were three signs acknowledging Steinlager beer's sponsorship of the tour.

The Secretary of GOAL, Mr Cliff Turner, arguing that it was possible to put the three men in a position where the signs would not have been seen, complained that the broadcast breached the requirements in the (renumbered) standards A3.a and A3.c of the (renamed) Programme Standards for the Promotion of Liquor. They read:

- A3. Broadcasters will ensure that the **incidental promotion of liquor** is minimised and in particular:
- a. Will not be a party to any contract or arrangement where incidental liquor promotion is a contrived part of the programme.
 - c. Will not unduly focus in a live or on-location event on any particular advertising signage, logo or any other sound or visual effect which promotes liquor.

TVNZ declined to uphold the complaint under standard A3.a on the basis that it had not been involved in the placement of the logos and was not a party to any arrangement where liquor promotion was a contrived part of the programme.

As for the A3.c aspect, TVNZ maintained that its applicability could be better assessed by referring to standard 1.6 of the Voluntary Sports Code for Liquor Advertising and Promotion on Television. The Authority accepts that a reference to the Voluntary Sports Code is acceptable as standard A3.d of the Programme Standards for the Promotion of Liquor provides that a breach of the Voluntary Code is also a breach of the Programme Standards. Standard 1.6 of the Voluntary Code provides:

1.6 Backdrops for Tour/Event Announcements or Interviews

Backdrops shall focus on the specific team, event or tour and may incorporate sponsorship logos. Backdrops shall not be a predominant feature. There shall be no reference to liquor advertisements.

At pre-arranged interviews the placement of the interviewee shall not have liquor signage as a predominant feature.



Observing that the Voluntary Code accepted that backdrops for tour announcements may include sponsorship logos, TVNZ said that standards A3.c and 1.6 when combined required that the backdrops containing sponsorship logos neither be unduly focussed on nor be a predominant feature. These rules, it added, had not been breached.

TVNZ stressed that the news conference portrayed during the broadcast was an event over which it had no control. The background logos could not be avoided although the shots were "tightened" to minimise their impact. When he referred the complaint to the Authority on GOAL's behalf, Mr Turner pointed to the temporary nature of the table at which the interviewees sat and questioned why TVNZ had not asked for the table to be moved. He continued to maintain that the broadcast breached both standards A3.a and A3.c.

In its comment to the Authority about the complaint, TVNZ pointed to the difference between an interview and a news conference and said that journalists had to accept the arrangements for a news conference as they found them. That situation was recognised in standard A3 which concluded:

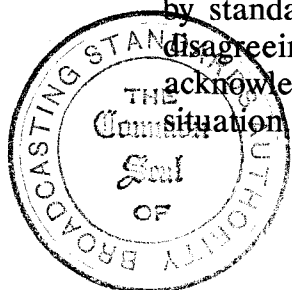
It is recognised that incidental liquor promotion occurs from time to time in programmes where broadcasters have little or no control over the situation. In those situations they must minimise the exposure to the best of their ability. Where broadcasters have control of the situation, they will ensure that the standards regarding incidental promotion are followed in the spirit as well as the letter.

It described in detail the shots used by its camera operator during the item in an effort to minimise the incidental promotion of liquor. In his final comment, Mr Turner argued, first, that efforts to minimise incidental liquor promotion required an attempt to have the news conference location shifted, and secondly, standard 1.6 of the Voluntary Sports Code had been breached as the liquor signage was a predominant background feature at the news conference.

The Authority began its examination of the complaint by considering whether the broadcast contravened the requirement in standard A3.a that the broadcaster shall not be a party to an arrangement where incidental liquor promotion is a contrived part of the programme. While agreeing with GOAL that the liquor promotion portrayed was obviously contrived, a majority of the Authority accepted that TVNZ, because it did not have control of the arrangements for the broadcast, was not a party to the agreement between the sport and the sponsor. It accepted that the item was a news conference and that TVNZ was present by invitation presumably together with numerous representatives of the print and electronic media. Accordingly, standard A3.a was not breached.

A minority of the Authority disagreed. Stressing that the promotion was a contrived part of the broadcast, it accepted GOAL's argument that TVNZ became a party as required by standard A3.a by participating in and broadcasting the news conference. While disagreeing with the decision, the minority expressed considerable sympathy for TVNZ, acknowledging that it was placed in a very difficult and, what it believed to be an unfair,

situation



As for standard A3.c, the Authority agreed with GOAL that the sponsorship logos, although not containing a sales message, promoted the named beer. TVNZ was thus required by the standard to "not unduly focus" on that signage during the broadcast of an on-location event.

In its application of the Programme Standards for the Promotion of Liquor which it has promulgated, the Authority was not prepared to agree with GOAL that TVNZ must ask for news conferences to be moved if it is to comply with the overriding requirement in standard A3 to minimise the incidental promotion of liquor. Taking the circumstances of the broadcast into account, the Authority concluded that TVNZ, for the most part, had not unduly focussed on the advertising signage and had complied with standard A3.c.

It noted that, during some of the discussion with one of the selectors, the shots had included a section of the wall behind him which was covered, in an obviously contrived way, with the sponsor's sign. Although borderline, the Authority observed that the focus continued to remain on the selector and it concluded that the injunction not to "unduly focus" on the signage had not been contravened.

TVNZ introduced standard 1.6 of the Voluntary Sports Code to the debate to illustrate its contention that backdrops for tour announcements may incorporate sponsorship logos. The Authority accepted that a reference to the Voluntary Code might be appropriate when applying the Programme Standards for the Promotion of Liquor. However, the second sentence in standard 1.6 reads "Backdrops shall not be a predominant feature".

In GOAL's final comment to the Authority, Mr Turner noted in passing that the backdrops might be a predominant feature in contravention of this provision.

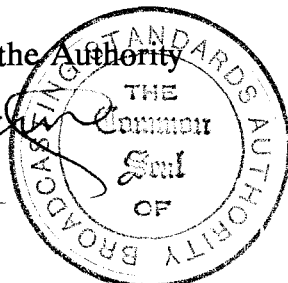
That aspect of the complaint was introduced too late in the process to require a ruling from the Authority. However, on the basis that this decision is one of the first on the provisions in the revised Programme Standards for the Promotion of Liquor, the Authority signals that, in view of the manner in which the backdrops were placed, it would have upheld a complaint under A3.d of the Programme Standards on the basis that a breach of standard 1.6 of the Voluntary Sports Code had occurred because the backdrops were undoubtedly a predominant feature in a clearly contrived situation.

For the reasons set forth above, a majority of the Authority declines to uphold the complaint that the broadcast by Television New Zealand Ltd of an item on *One Network News* on 11 June 1993 breached standard A3.a of the Programme Standards for the Promotion of Liquor.

The Authority unanimously declines to uphold the complaint that the same broadcast breached standard A3.c of the Code.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
18 November 1993



Appendix

GOAL's Complaint to Television New Zealand Limited

In a letter dated 14 June 1993, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Television New Zealand Ltd about an item of sports news on *One Network News* between 6.00 - 6.30pm on Friday 11 June 1993.

Mr Turner observed that two of the three people interviewed - the captain and two All Black selectors - seen to take their seats as the item began, were sitting under signs advertising Steinlager beer. As it would have been possible to interview the three people in a position where the signs promoting liquor would not have been seen, Mr Turner argued that the item breached standards 14.a and 14.c of the Additional Standards to the ASA Code for Liquor Promotion which require broadcasters to minimise the incidental promotion of liquor. (These standards have been renamed as the Programme Standards for the Promotion of Liquor and have been renumbered as A3.a and A3.c. The new name and numbers have been used in the Authority's decision.)

TVNZ's Response to the Formal Complaint

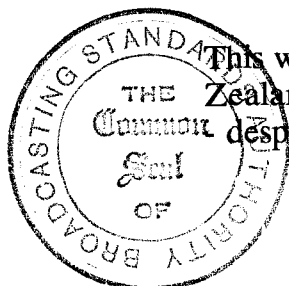
TVNZ advised GOAL of its Complaints Committee's decision in a letter dated 21 July 1993 when it reported that the complaints had been assessed under the standards nominated.

It reported that the news conference involving two selectors and the captain of the All Blacks was held on the eve of a significant international rugby encounter. Assuming that the complaint referred to the sponsorship logos which were seen in the backdrop, TVNZ said it had not been involved with the placement of the logos and had not contravened standard 14.a (A3.a) as it was not a party to any arrangement where incidental liquor promotion was a contrived part of the programme.

Emphasising that the signage was not liquor promotion in the normal sense but sponsorship logos clearly identified with the Lions tour, TVNZ referred to the note which amplified standard 14.c (A3.c), and to rule 1.6 of the Voluntary Sports Code. The former accepted that the standard did not exclude background signage which occurred during the filming of an event while the latter accepted backdrops which incorporated sponsorship logos provided that the backdrops were not a predominant feature and that they did not contain any reference to liquor advertisements.

TVNZ recorded;

This was an event of some significance, the conduct of which Television New Zealand Limited had no control over. Background logos could not be avoided despite the efforts of the camera crew to tighten the shot to minimise their



impact. The backdrop, which incorporated sponsorship logos, did focus on the tour and contained no advertising messages. The attention of the viewer was at all times drawn to the speakers at the news conference and the logos were not allowed to dominate.

It argued that the presence of the logos was minimised to the extent possible and, in view of the exceptions noted, standard 14.c (A3.c) had not been breached.

GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's response, in a letter dated 23 July 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.

He contested TVNZ's reasoning by pointing out that just because an interview contained worthwhile news material, that fact did not justify breaching the Liquor Advertising Code. The table at which the selectors and captain sat, he continued, was of light construction and could have easily been moved. Placing the table under signs promoting beer was a contrived arrangement which TVNZ, by broadcasting a report, had become part of. A contrived arrangement in breach of standard 14.a (A3.a) he argued, did not require a financial involvement.

In response to TVNZ's point that the signs "were not liquor signs in the accepted sense", Mr Turner maintained that a breach of standard 14.c (A3.c) required a sign "promoting" liquor which had occurred in this case. The explanatory notes, he concluded, might help to explain the standards but they did not override them.

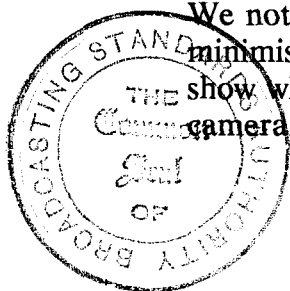
TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 27 July 1993 and TVNZ's reply, 20 August.

Central to the complaint, TVNZ stated, was whether or not the broadcaster had control over the situation involved and the difference between an interview and a news conference. Pointing out that the organisers of a news conference arranged the location (compared with the broadcaster's selection of an interview site) TVNZ said that journalists had to accept the arrangement for a news conference as they found it.

With regard to the broadcast complained about, TVNZ argued that the situation was covered by the footnote to standard 14 (A3) as broadcasters had no control over the situation. It continued:

We note further that there is visual evidence that efforts were made to minimise the exposure of the Steinlager material. After the first wide shot, to show which rugby administrators were present at the news conference, the camera took tight close up shots of the three participants and of Mr Laurie



Mains speaking. The wide shot was used very briefly a second time simply to provide a cutaway (which removes the need for an ugly jump cut). That the tight close up of Mr Mains was possible reflects quick thinking by the cameraperson, because in a news conference involving three people it is usually very difficult to judge who will speak next and the easy way out would have been to hold the wide shot until that became clear.

Mr Turner's apparent belief that Television New Zealand could simply have relocated the news conference to avoid the signage betrays a misunderstanding of what a news conference is.

GOAL's Final Comment to the Authority

On GOAL's behalf, Mr Turner responded to TVNZ's reply in a letter dated 26 August 1993.

First, he said, TVNZ had not said that it had made every effort for the news conference to be moved. Such a request, he said, was required to comply with standard 14 (A3) when it stated that the incidental promotion of liquor was to be minimised. Mr Turner commented:

If efforts were made and the efforts had been rebuffed by the organiser of the news conference TVNZ would have been on safer ground in making such a claim.

Secondly, and acknowledging that his referral to rule 1.6 of the Voluntary Sports Code was belated, he argued that the Rugby Union had breached the prohibition on having liquor signage as a predominant feature at pre-arranged interviews and, as a consequence, TVNZ was obliged to decline to broadcast the item.

