

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 69/93
Dated the 9th day of June 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
CANTERBURY TELEVISION
LIMITED

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

DECISION

Introduction

DB Sport is the title of a programme broadcast regularly by Canterbury Television Ltd between 7.00 - 7 30pm. The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Turner, wrote to CTV about the frequent exposure of the DB logo on the programme on 9 November 1992 and, maintaining that CTV was paid for the exposure, argued that the entire programme was an advertisement. As a liquor advertisement, GOAL continued, it breached the broadcasting standards by being broadcast before 9.00pm. GOAL also complained that the programme breached the standard prohibiting the saturation of liquor advertising.

Denying that it received a payment from DB for the exposure of the logo, CTV said that the programme was not converted into an advertisement and declined to uphold the complaint. The saturation aspect of the complaint, it added, had been upheld in a recent decision from the Broadcasting Standards Authority determining a complaint about the broadcast of *DB Sport* on September 7. Dissatisfied with CTV's 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.

The Secretary of GOAL, Mr Cliff Turner, complained to CTV about the programme *DB Sport* screened on 9 November 1992. Because of the frequency with which the DB logo appeared during the programme, he argued that it was highly probable that DB had paid for the exposure. Consequently, he continued, the entire programme was an advertising programme which, as it promoted liquor, had to comply with the standards relating to liquor advertising on television. Those standards, he noted, allowed for two types of programmes which advertised liquor - sponsorship advertisements and liquor advertisements. A requirement for a sponsorship advertisement was that it was to contain only a brief mention of the liquor company's name or logo. In view of the frequent mentions of the logo, GOAL argued, the programme was not a sponsorship advertisement. Therefore, it must be a liquor advertisement. However, as the standards prohibited liquor advertisements before 9.00pm, GOAL concluded its argument by insisting that *DB Sport* breached these standards as it was broadcast between 7.00 - 7.30pm.

As a separate argument, GOAL complained that the frequency of the appearance of the DB logo on the screen breached the saturation requirement in standard 29 of the Television Code of Broadcasting Practice. It reads in part:

- 29 Saturation or an impression of saturation of liquor promotion, including liquor advertising, sponsorship advertising and programme sponsorship credits by liquor advertisers, must be avoided.

Pointing out that the first part of GOAL's complaint was based on the assumption that DB paid for the exposure of the logo in *DB Sport*, CTV maintained that that assumption was incorrect. The legislative definition of an "Advertising Programme" reads (Broadcasting Act 1989, s.2):

"Advertising programme" means a programme or part of a programme intended to promote the interest of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made, whether in money or otherwise:

The definition does not require that the payment be in cash for a programme to be an advertising programme. However, it does require that there be payment of some kind and CTV denied that payment of any kind occurred. It provided the Authority with part of the agreement between DB and itself in which DB specifically declined to pay any fee for sponsorship. Rather, it agreed to buy product commercials and/or trailers for the show each week the cost of which was based on the ratings of the show. The sponsorship was not regarded as a specific aspect of the payment made by the liquor company for its association with the programme. As stated in the agreement:



In return we [DB] receive the sponsorship as added value in recognition of that investment.

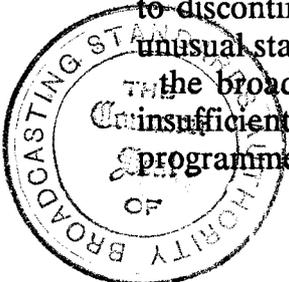
The Authority considered first the saturation aspect of the complaint made under standard 29 of the Television Code. The present complaint dated 30 November referring to a programme broadcast on 9 November 1992 was made before the Authority had issued its decision on an earlier complaint that *DB Sport*, broadcast on 7 September 1992, had breached the saturation requirement in standard 29. That decision (No: 8/93) was issued on 15 February 1993 and it upheld the complaint, recording:

That the appearances of the logo on *DB Sport* broadcast by CTV [on 7 September] gave the impression of saturation of liquor promotion and thus breached standard 29.

The frequency of the appearances of the DB logo on *DB Sport* on 9 November was far in excess of that in the earlier decision and CTV, while disagreeing that the programme contained liquor promotion which gave the impression of saturation, acknowledged to the Authority that that aspect of the complaint would be upheld on this occasion in view of the precedent. The Authority agreed with the latter part of CTV's comment. On the basis of the precedent set by the earlier decision which it saw no reason to review, the Authority upheld the complaint that *DB Sport* contravened the liquor promotion restrictions in standard 29. Indeed, it decided that the breach on this occasion, because of the frequent displays of the DB logo, amounted to a gross contravention of the rules.

In a programme of approximately 22 minutes the company name, brand name or logo was seen approximately fifty times in addition to such normally accepted promotions as the signs around the race track, at the finishing post etc. Viewers were told by a representative of the caterers that the biggest supplier of beer was DB, which delivered a container of 20,000 litres from DB Timaru, and the General Manager DB South Island Breweries Ltd was interviewed at length. During that interview he selected his choice for every race on the DB Cup day programme and every pick by himself and the interviewer was accompanied by a roundel each and a "DB Pic" logo. At times the screen was saturated by the addition of a third promotion in the form of a substantial promotional backdrop. These of course were in addition to all the oral references to the sponsors in conversation and comment.

Turning to the aspect of the complaint which alleged that the entire programme was a liquor advertisement which breached the liquor advertising rules by being broadcast before 9.00pm, the Authority acknowledged that the situation described by the broadcaster was unusual. It was unusual, accepting the broadcaster's reasoning, in that the liquor promotion broadcast by a commercial organisation was undertaken entirely at the broadcaster's discretion. Moreover, according to the broadcaster's reasoning, as it did not receive payment in cash or kind for that promotion, it would have been able to discontinue the promotion without any commercial consequences. Because of that unusual state of affairs - the total absence of any payment or consideration of any kind - the broadcaster maintained that the extensive liquor promotion which occurred was insufficient to turn the programme into a liquor advertisement. In other words, as the programme which promoted liquor was not paid for by the liquor company in any way,



it was not an advertising programme as defined in the Act. Consequently, pursuant to that reasoning, the conclusion was reached that the standards relating to the advertising of alcohol were inapplicable and rules cited by GOAL were irrelevant.

Furthermore, according to CTV's argument, an extraordinary situation arises under which the controls on alcohol advertising can be circumvented by a broadcaster which decides to promote alcohol at its own discretion. The standards under which the complaint was laid do not provide a specific answer to that unsatisfactory situation. However, the situation is not entirely without controls as the portrayal of alcohol advertising on such programmes as *DB Sport* for example, are still subject to standard 29 of the Television Code of Broadcasting Practice - ie the standard dealing with the saturation of liquor promotion and to the more general rules relating to the incidental promotion of liquor. Furthermore, it is a situation which has been addressed specifically in the recently released standards now applying to the promotion of liquor by broadcasters.

However, the Authority was not required to deal with the unusual situation raised by this complaint first because, as noted above, it upheld the saturation aspect of the complaint. Secondly, the relevant standards were rewritten after this complaint was referred to the Authority but before the Authority released its decision. However, for the sake of clarification, the Authority decided to address the complex issues.

The definition of an "advertising programme" in the Act is broad. It requires the promotion of a product or service and, without question, DB was promoted on *DB Sport*. In return for the promotion, the definition requires some form of "payment" - not necessarily cash - but there must be some form of recompense. The agreement between CTV and DB supplied to the Authority explicitly stated that there was to be no fee for sponsorship. It also stated that DB shall commit part of its advertising budget to CTV and "in return" it shall receive the added value of the sponsorship. The amount of money to be spent was based on the ratings achieved but that money was said to be purchasing the product commercials and trailers, not the sponsorship exposure. However, in the Authority's opinion, DB also benefitted from the "added value" of the sponsorship. In other words, the distinction between the liquor promotion explicitly paid for, and the liquor promotion which was not explicitly paid for, is a technical or semantic one. As sponsorship was expected by DB as part of the programme which was broadcast, its removal was not a matter entirely at the broadcaster's whim.

The Authority accepted that the agreement was not written in the manner in which it was in order to circumvent the liquor advertising standards but, when considering the complaint, the Authority noted that the liquor advertising rules explicitly state their spirit are as important as the specific words. Acknowledging that the agreement between DB and CTV was written in a way to advance the commercial interests of the sponsor and the broadcaster and taking the injunction about the spirit of the rules into account, the Authority concluded that the sponsorship rewards accorded the sponsor of *DB Sport* were linked to and constituted part of the formal arrangement between DB and CTV.

Supporting the Authority's conclusion that the sponsorship arrangement amounted to payment, the Authority again recorded that the arrangement between DB and CTV did not refer to payment for the sponsorship but recognised that the sponsorship was of



benefit to the liquor company. The sponsorship promoted DB and, for the want of a better term, increased the goodwill between the parties. Goodwill is a recognised economic asset and, accordingly, its increase to the parties can be regarded as a payment within the requirements of the legislative definition. The Authority was of the view that this reasoning further supported its conclusion that the broadcast of liquor promotion during *DB Sport* turned the programme into an advertising programme.

As an advertising programme, *DB Sport* could be either a sponsorship advertising programme or a liquor advertising one. In the Code for Advertising Alcoholic Beverages, "Sponsorship Advertising" is defined. It reads:

"Sponsorship Advertising" means any advertisement which contains a statement of sponsorship by or on behalf of an advertiser (product, brand or outlet) of a sports or other event (eg, "Sponsored by ...", "... proud sponsors of ...") provided always that such an advertisement does not contain any sales message pertaining to liquor and does not depict liquor products, liquor packaging or the consumption of liquor. References to a sponsor may contain the sponsor's name and/or logo provided that such name and/or logo contains no other reference to liquor or a sales message.

That definition is expanded on in Rule E of the Schedule of the Liquor Advertising Rules for Radio and Television which provides:

- E Sponsorship advertisements, including sponsorship credits, by liquor advertisers shall be subject to same rules as apply to liquor advertisements in the Code, subject to the following rules:
- (i) They shall refer only to the promotion of sporting, cultural or social events, person(s) or activities, or the broadcast of the event, and the sponsor's support.
 - (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) They may feature heroes or heroines of the young
 - a) participating in a sponsored event or activity
or
 - b) engaged in conduct related to a sponsored event, person or activity

provided there is strict adherence to Rule A.

GOAL alleged that *DB Sport* could not be accepted as a sponsorship advertisement because, although it did not contain a sales message, it breached Rule E (ii). The



frequent portrayal of the DB logo, GOAL argued, was not a "brief mention" of the company name, brand name or logo. In view of the frequent displays of the DB logo - both on the set behind the presenter and on the roundels announcing various participants - the Authority agreed with GOAL's contention.

In Decision No: 87/92, the Authority dealt with a similar issue. The broadcast on that occasion showed the liquor company's logo frequently but included neither a sponsorship acknowledgement nor a sales message. The broadcaster argued that the displays of the logo were sponsorship credits - an advertising acknowledgement referred to in the Broadcasting Act. The Authority disagreed with the broadcaster as "sponsorship credits" were legislatively designed to be brief passing references at the beginning and the end of a programme - not frequent references throughout a programme. The Authority decided that the omission of a sales message was the more important consideration in determining the nature of the advertisement signage than the omission of the sponsorship acknowledgement and, in Decision No: 87/92, ruled that the frequent appearances of the logo resulted in the programme becoming a sponsorship advertisement.

Pursuant to that reasoning, the Authority decided that the programme *DB Sport* was a sponsorship advertisement. As the logos did not contain a sales message - the primary consideration - it was not a liquor advertisement. Consequently, the Authority ruled, the broadcast did not breach Rule C of the Schedule of the Liquor Advertising Rules which prohibits liquor advertisements - but not sponsorship advertisements - before 9.00pm.

For the reasons set forth above, the Authority upholds the complaint that the broadcast by Canterbury Television Ltd of the programme *DB Sport* on 9 November 1992 breached standard 29 of the Television Code of Broadcasting Practice.

The Authority declines to uphold the other aspect of the complaint.

Having upheld a complaint, the Authority may make an order under s.13 (1) of the Broadcasting Act 1989. It does not intend to do so on this occasion. First, the breach of standard 29 occurred before the Authority had ruled - and upheld - a complaint about an earlier broadcast of *DB Sport*. As noted in the decision, this complaint was made before the broadcaster was advised (Decision No: 8/93 dated 15 February 1993) that the amount of saturation exposure on an earlier *DB Sport* breached the saturation requirement in standard 29. It would have viewed the situation very differently had the complaint referred to a programme broadcast after CTV had received that decision. As detailed on page 3, the programme was in gross breach of standard 29 both in spirit and law and under other circumstances would have invoked a penalty.

Secondly, the Authority acknowledges that the distinctions between liquor advertisements and sponsorship advertisements (and indeed sponsorship credits) are not as lucid as they could be. It is a concern which has been addressed specifically in the recently released standards which apply to the promotion of liquor on radio and television. Under these rules which are now in effect, programmes containing extensive liquor promotion such as *DB Sport* are not acceptable - regardless of whether or not the promotion is paid for - as standard 14 (b) reads:



14 Broadcasters will ensure that the incidental promotion of liquor is minimised and in particular:

- b. Will ensure that backdrops and props for any in-house studio programmes do not carry liquor promotion.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



9 June 1993

[Faint handwritten notes]

Appendix

GOAL's Complaint to Canterbury Television Limited

In a letter dated 30 November 1992, the Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to Canterbury Television Ltd about the programme *DB Sport* broadcast between 7.00 -7.30pm on 9 November.

Mr Turner began:

I have no doubt that Dominion Breweries paid your company for the frequent exposure of the DB logo. This payment turns the whole programme into an advertisement.

He referred to Rule E(ii) of the Schedule to the Liquor Advertising Rules for Radio and Television which provides that sponsorship advertisements by liquor companies shall contain only for a "brief mention of a company name, brand name or logo". As the programme failed to comply with that requirement because the DB logo was seen many times, the entire programme was a liquor advertisement. As a liquor advertisement, Mr Turner continued, the programme breached Rule C of the Schedule which prohibits such advertisements before 9.00pm.

In addition, GOAL complained that the entire programme breached the prohibition on the saturation of liquor advertising in standard 29 of the Television Code of Broadcasting Practice.

CTV's Response to the Formal Complaint

In its reply dated 24 February, CTV advised GOAL that the arrangement between DB and itself did not involve payment for the exposure of the logo. It continued:

Accordingly, your suggestion that the whole programme is converted into a sponsorship advertisement has no substance.

Moreover, CTV wrote, the reference to "a brief mention to a company name" in Rule E(ii) applied to the type not the frequency of the display. The type of display prohibited was the imitation of liquor advertising. Consequently, CTV said that even if the programme was deemed to be sponsorship advertisement, it was not converted into a liquor one as the logo did not imitate a liquor advertisement.

CTV offered no comment on the saturation complaint as the matter had been the subject of an earlier complaint and recent decision.



GOAL's Complaint to the Broadcasting Standards Authority

Dissatisfied with CTV's response, in a letter dated 9 March 1993 Mr Turner on GOAL's behalf referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He referred to Decision No: 70/92, dated 8 October 1992 when the Authority stated while upholding a saturation complaint under standard 29 from GOAL about the broadcast of a rugby league game on TV2:

As the current complaint is the first it has received under standard 29, the Authority does not intend to make an order on this occasion but it wants to make it clear to broadcasters that it will not accept sponsorship liquor advertisements gratuitously tacked onto such things as player profiles, scorelines and replays to the extent that occurred in this programme.

In view of that comment contained in a decision issued one month before the broadcast currently complained about, Mr Turner asked the Authority to give consideration to imposing a penalty on CTV.

CTV's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 12 March 1993 and CTV, in its reply of 19 March, said it had nothing to add to its letter to GOAL dated 24 February.

In a letter dated 30 April 1993, the Authority sought information from CTV, first, about the "arrangement" between DB and itself, and secondly, whether it intended to respond to the saturation aspect of the complaint.

In its reply dated 5 May 1993, CTV explained that before transmission began, DB

placed a limited value on the sponsorship and proposed not to pay a fee for it, but rather to commit an amount of its budget each week to CTV in the form of product commercials and/or trailers for the show. The sponsorship was treated merely as added value in recognition of that investment. The consideration for the payment was the product commercials or trailers. The sponsorship is not therefore a sponsorship advertisement.

As for the saturation aspect of the complaint, CTV said that it had not repeated its response to an earlier complaint from GOAL that the programme contained saturation advertising. Moreover, before replying to GOAL, the Authority had ruled, on another complaint about DB Sport that the saturation standard was breached. It continued:

Notwithstanding the Authority's decision, and for the purpose of this complaint, we reiterate that we do not accept that saturation advertising is



provided in the programme. We can offer nothing in support of that finding other than that which was contained in our February letter so that we accept that the Authority will find against us in this instance.

GOAL's Final Comment to the Authority

In response to CTV's letter of 12 March and 5 May, in a letter dated 13 May 1993 GOAL found it difficult too understand why CTV continued to broadcast a programme which the Authority had determined breached the standards.

Describing CTV's letter of 5 May as largely unintelligible, GOAL argued that if the programme was not an advertising one, then at least it breached the incidental liquor advertising rules.

