

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 7/90
Dated the 23rd day of May 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

JEANETTE FORBES
of Christchurch (on behalf of the
Children's Television Foundation)

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.R. Morris

DECISION

Introduction

This complaint arose from the broadcast of a Lion Brown Limited advertisement supporting Canterbury/Christchurch rugby during an episode of "The Cosby Show" on 17 September 1989.

Mrs Forbes' Complaint to Television New Zealand Ltd

In a formal complaint to TVNZ on behalf of the Children's Television Foundation, Mrs Jeanette Forbes alleged that the advertisement "contravenes the codes of practice that you are operating under at the moment. It also contravenes the Committee of Advertising Code for Advertising Alcoholic Beverages - Code 2 - with regard to advertising to minors."



The Advertisement

The commercial is a collection of shots of people in different situations in and around Christchurch, interspersed with clips of male rugby players donning or wearing Canterbury jerseys in a changing room and, later, running out onto the field to the cheers of spectators and cheerleaders. The distinctive red and black colours of Canterbury representative rugby teams dominate the advertisement. In addition to shots of the players, there are children dressed in red and black holding red and black balloons; teenage boys wearing red and black playing with a rugby ball; a couple in an open-topped car, the man wearing a black tee-shirt and the woman wearing a red top, with children in the rear seat holding red and black balloons; a bride with what appears to be a red ribbon in her black hair; a woman at a clothesline with red and white sheets (or blankets); sportsmen with red singlets and black shorts; a couple in a street scene with red and black umbrellas; an antiquated red fire-engine (with "Lion Brown supports Canterbury rugby" emblazoned on its side) with black-garbed attendants; and cheerleaders and enthusiastic supporters wearing red and black hats, scarves, etc. as the players run out onto the field. At the end of the advertisement a logo appears with the words "Christchurch Rugby" in a circle and the words "Lion Brown" in the centre. A caption also states "More of a supporter, more of a team".

Accompanying the advertisement is a jingle which is as follows:

Take a look around
 What you see, what's the sound aha
 Every street, every door, every man, rich and poor aha
 In their face, in their eyes, it's their game, it's
 their pride
 Ooooh they'll never let the red and black down

It's their colours, their team, it's their town
 And they just want to say
 It's the blacks all the way
 Cause wherever you see the red and black
 You'll always, always, always find the crowd

[Voice-Over] Lion Brown Limited. A proud Canterbury supporter.

They'll never let the red and black down
 They'll never let the red and black down

Television New Zealand's Response to Mrs Forbes' Complaint

In a letter dated 10 November 1989, TVNZ advised Mrs Forbes that her complaint had not been upheld by its Complaints Committee.

The Complaints Committee had examined the complaint in light of what were referred to as Television Advertising Rule 1.11.6 and Code 2 of the CAP Code for Advertising



Alcoholic Beverages.

Television Advertising Rule 1.11.6 is now located in the Code for Liquor Advertising included in the TV Advertising Standards section of the Codes of Broadcasting Practice for Television. It appears as standard 6 and reads as follows:

- 6 Advertisements associated with alcohol must not be presented in association with or during programmes directed specifically at children or adolescents.

The Committee of Advertising Practice Code for Advertising Alcoholic Beverages provides in rule 2 (i.e. the "Code 2" cited by the Foundation) that:

- 2 Advertisements for alcoholic beverages shall be directed to adult audiences. Liquor advertisements shall not be placed in publications which are intended particularly for minors.

The Complaints Committee decided that the advertisement fell within the definition of "sponsorship advertising" contained in the CAP Code even though it did not include either of the phrases given as examples in that definition, i.e. "sponsored by" or "proud sponsors of". (The Committee felt that the use of the words "Lion Brown Limited. A proud Canterbury supporter", the end caption "More of a supporter, more of a team", and such visual statements as "Lion Brown Supports Canterbury Rugby" on the fire-engine, all implied sponsorship by Lion Brown Limited.) In addition, the advertisement fulfilled the other conditions of the definition, in that it did not contain any sales message pertaining to liquor and did not depict liquor products, packaging or consumption. Because the Committee viewed the commercial as "sponsorship advertising" and not as "liquor advertising", it decided that "[rule] 2 did not apply".

Since, however, the substance of rule 2 of the CAP Code is also embodied in standard 6 of the Code for Liquor Advertising included in the TV Advertising Standards, the Committee also looked at the complaint in the light of that standard. It concluded that as "The Cosby Show" is designated as a family programme and is not directed specifically at children or adolescents, "the advertisement was not seen as being in serious conflict with" the requirements of standard 6.

Mrs Forbes' Complaint to the Broadcasting Standards Authority

In a letter dated 28 November 1989, Mrs Forbes formally complained to the Authority, on behalf of the Children's Television Foundation, that she did not agree that the advertisement "was not a liquor advertisement"; nor did she agree that the Cosby Show was not a programme directed specifically at children or at adolescents. She stated that if the advertisement did not contravene rule 2 of the CAP Code or standard 6 of the Code for Liquor Advertising, then those provisions were inadequate.



Mrs Forbes also made the following points:

- (1) Lion Brown is a well-known brand of beer and the name was prominently displayed in the advertisement. The latter was "clearly designed to promote the sale of that brand".
- (2) Research shows that sponsorship advertising contains a sales message - a copy of an article from the British Journal of Addiction purporting to illustrate or prove this point was attached.
- (3) The Cosby Show is G rated and is directed as much at children and adolescents as adults. A large proportion and probably a majority of viewers of the programme would be children and adolescents.
- (4) The Foundation would be concerned if (a) sponsored advertising is allowed to "escape restrictions" that otherwise apply to alcohol advertising and (b) broadcasters were able to get around restrictions on the advertising of alcohol to children or adolescents by claiming that the advertisements were not directed "specifically" at them, notwithstanding that they could have formed a large proportion of the likely viewing audience.

Mrs Forbes' letter was referred to Television New Zealand Limited for its comments.

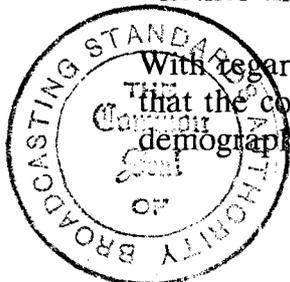
Television New Zealand's Response to the Authority

On 26 January 1990, TVNZ advised the Authority of its views on Mrs Forbes' complaint.

Taking the first of Mrs Forbes' two statements of disagreement, TVNZ maintained that "there can be no question that the advertisement does not come within the definition of "Liquor Advertising" [contained in the CAP Code for Advertising Alcoholic Beverages] and that consequently [rule] 2 has no application. Alcoholic beverages as such are not being advertised. But it does come within the scope of the sponsorship definition". TVNZ reiterated that the advertisement met the "Sponsorship Advertising" definition: the words "proud (Canterbury) supporter" were seen by the Committee, in the context of the advertisement, "to be synonymous with the meaning of sponsor. The often important qualifications of the definition concerning sales messages pertaining to liquor and the definition of liquor products were not in question."

As for the application of standard 6 of the Code for Liquor Advertising, TVNZ maintained that "the advertisement is not associated with alcohol as such but relates to the sponsoring company's generosity image ... the supporter of Christchurch rugby is a company not a product. On this basis alone, the rule is not applicable regardless of whether the complainant disagrees that "The Cosby Show" is a family programme".

With regard to the second of Mrs Forbes' statements of disagreement, TVNZ advised that the company can show, on the basis of an AGB/McNair audience survey, that the demographic composition of the audience supports the Company's statement about it



being a family programme. The result of the survey was that 368,550 viewers in the 5-19 years range viewed the programme while some 494,420 adults were watching it. TVNZ offered these comments "for the Authority's information as the advertising in question is not associated with alcohol, therefore the point about whether the programme is "directed specifically at children or adolescents" does not have to be determined."

TVNZ did not comment on the point which Mrs Forbes had wished to illustrate by reference to the extract she had sent to the Authority from the British Journal of Addiction. TVNZ submitted that as the extract had not been placed before TVNZ's Complaints Committee, and had not therefore been taken into account in reaching its decision, "this new material is inadmissible for the purposes of the Authority's investigation and review of that decision".

As to the other points made by Mrs Forbes, TVNZ had this to say:

"While the company appreciates the genuine concerns expressed by the complainant's Foundation, the fact of the matter is that the advertising of alcohol as such is not permitted on television. It is the company image which is involved. It is submitted that much of the Foundation's submission is concerned with matters not having a bearing on whether the advertisement in question is in breach of the specified code nominated by the complainant, and the rule which the company considered could also be in question on the basis of statements in the letter of complaint."

Mrs Forbes' Further Comments to the Authority

In commenting upon TVNZ's response of 26 January, Mrs Forbes made a number of points in a letter dated 13 February 1990. Included amongst these were the following:

The Broadcasting Act 1989 does not restrict the power of the Authority in regard to receiving evidence in respect of complaints. Accordingly, all the information supplied is able to be considered by the Authority. In any event, the information contained with our letter of 28 November 1989 was submitted to the Authority after the reasons for the rejection of the complaint had been received from TVNZ. It was to meet the arguments relied upon by TVNZ that we submitted this information to the Authority.

I also note that TVNZ has not sought to answer or take issue with the information contained with our letter of 28 November 1989.

I repeat again that our Foundation is concerned about this matter, both on a specific level in respect of the particular advertisement complained of but, also on a more general level in so far as sponsored liquor advertising on television is concerned.



TVNZ's Further Comments

In a letter dated 14 March 1990, TVNZ commented, amongst other things, that

Although it may not be spelt out in the Act that there is any restriction as to the receipt of evidence by the Authority with regard to complaints, the company would observe that under section 10(2)(c) of the Act there is a requirement relating to the principles of natural justice. It would be the company's submission that in any investigation and review of a broadcaster's decision on a complaint, these principles would not be served if the Authority was to consider evidence not supplied in support of an allegation of a breach of any Act provision or code when the company considered the complaint in the first place. Furthermore, it was apparent to the company that the new material supplied (The British Journal of Addiction extract for example) did not have relevancy in a determination of whether either of code or rule provisions had been breached. The company would reaffirm that it considers there is an important admissibility question involved when it comes to reviewing the specifics of the complaint as they relate to the statutory provisions.

The company did not seek to pick up or answer aspects raised in the letter of 28 November where they did not relate specifically to factors as to whether there had been a distinct breach of the codes.

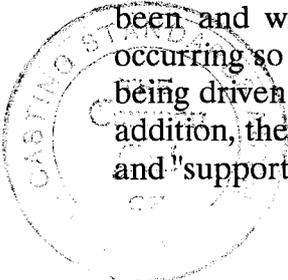
The Foundation is clearly concerned about a much broader issue which is a subject of growing debate in the community and not exclusively aimed at television.

In essence it would appear that the Foundation may still have an imperfect impression of what constitutes sponsorship advertising. It should be added that the complaint and correspondence predates the Authority's Decision No: 1/90 and rider.

Decision

There is a clear disagreement between the Foundation and TVNZ Ltd as to whether the advertisement in question is a "liquor advertisement" for the purposes of rule 2 (referred to as Code 2 by the Complainant) of the CAP Code for Advertising Alcoholic Beverages.

TVNZ maintains that it is not, and that it comes within the scope of, and meets, the "Sponsorship Advertising" definition contained in the CAP Code. In this respect, the Authority accepts that it probably meets those requirements, and is not a "liquor advertisement" for the purposes of rule 2, although it is deficient in the omission on two occasions of the word "Limited" after "Lion Brown", an omission which has previously been and will continue to be commented upon by the Authority. This omission is occurring so regularly in a series of complaints at present before the Authority that it is being driven to the conclusion that the omission is deliberate rather than accidental. In addition, the Authority considers that it would be idle to suggest that the word "supports" and "supporter of" are clear, adequate and unequivocal synonyms of the words "sponsors"



and "sponsors of": an individual or company can support an event without sponsoring it.

The position is not so clear in respect of standard 6 of the Code for Liquor Advertising in the TV Advertising Section of the Codes of Broadcasting Practice for Television. This standard provides that "Advertisements associated with alcohol must not be presented in association with or during programmes directed specifically at children or adolescents". The Authority considers that the advertisement cannot be seriously considered as not being "associated with alcohol". However, having accepted this premise, if the complaint is to be upheld the programme must be proved to have been directed specifically at children or adolescents. This the Authority cannot accept - the "Cosby Show" appears to be just as popular with adults as it is with children.

For the reasons set forth above, the Authority declines to uphold the complaint.

Having arrived at that conclusion, however, the Authority advises broadcasters that it agrees with the complainant that the Code is inadequate in that advertisements associated with alcohol should not be presented in association with or during programmes carrying "G" classifications which may be screened at any time (in this case at 7.20 p.m. on Sunday evening). The Authority has already referred to the inadequacies of the present classification system which will be considered when the review of Codes takes place (see Decision No: 4/90). In this respect, the Authority will be giving consideration to emphasising a watershed during the evening.

The Authority further advises that if advertisers and broadcasters are not prepared voluntarily to ensure that company names are recorded in full at all times in their advertisements and that the word "sponsor" or "sponsorship" is specifically used at all times, it will at the time of such review seek to ensure that these requirements become mandatory and that no abbreviations or alternatives are acceptable.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



23 May 1990