

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 20/90

Dated the 18th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

JUDY MALONE

of Masterton

Broadcaster

TELEVISION NEW ZEALAND LTD

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

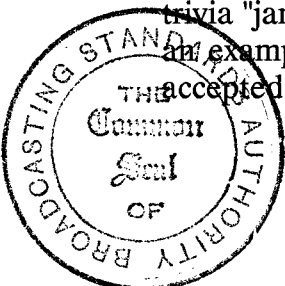
On 6 and 7 March, TV1 screened the mini-series "Murderers Among Us: The Story of Simon Weisenthal". This programme, which was about the life and times of the legendary Nazi-hunter, had been produced overseas and its makers had included normal commercial breaks.

Ms Judy Malone objected to the presence of advertising during the programme, considering that it offended against standards of good taste and decency.

Ms Malone's Complaint to Television New Zealand Limited

On 21 March, Ms Malone made a formal complaint to TVNZ Ltd alleging that the inclusion of advertisements amounted to a serious failure on the part of the broadcaster to meet its responsibility, laid down in section 4(1)(a) of the Broadcasting Act 1989, "to maintain standards consistent with the observance of good taste and decency".

In her view, the advertisements, some of which she named, were no more than frenetic trivia "jammed-up against scenes of unparalleled human suffering and brutality ... it was an example of monstrous insensitivity and bad taste The holocaust is universally accepted as one of the greatest crimes in history ... it must never be trivialised".



TVNZ's Response to Ms Malone

In a letter dated 14 May, Ms Malone was advised that while TVNZ's Complaints Committee acknowledged and respected her genuine concerns, it had declined to uphold her complaint.

TVNZ had taken care to ensure that the advertising to be associated with the programme would not be inappropriate. The commercials which butted on to the programme had been studied and there was none which could be regarded "as having been in bad taste or totally insensitive through placement".

As to the essence of Ms Malone's complaint, the presence of advertising per se, TVNZ felt that it had handled the issue of the appropriateness of the advertisements in a responsible way and was unable to agree that it had "trivialised" the trauma of the holocaust. It was also noted that TVNZ had not utilised all the commercial breaks that had actually been built into the programme by its makers.

Referral of Ms Malone's Complaint to the Broadcasting Standards Authority

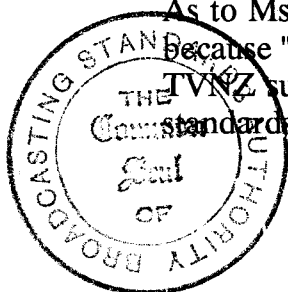
Ms Malone was dissatisfied with the decision and referred her complaint to the Authority for an investigation and review.

In her Broadcasting Complaint Referral Form, dated 14 June, Ms Malone said that she could not believe that any unprejudiced person could view the programme and argue that "the inclusion of commercial advertising was in keeping with standards of good taste and decency". In her view, her complaint had been rejected because TVNZ put administrative convenience and advertising profits above its statutory obligation to maintain standards of good taste and decency.

TVNZ's Response to the Authority

On 31 August, TVNZ emphasised that, because of the sensitive nature of the programme, advertising agencies were made aware of its precise nature in order to ensure that the advertisements were suitable for incorporation within it. Furthermore, these advertisements were carefully checked for compatibility with the programme prior to transmission. In addition, not all the built-in commercial breaks were utilised and TVNZ approached the question of the selection of advertisements with the utmost caution and care. (A computer print-out of the ads was attached to TVNZ's letter.) TVNZ also submitted that "advertising content, per se, unless it is totally inappropriate and butting immediately alongside harrowing material, would not place the observance of section 4(1)(a) of the the Act in jeopardy".

As to Ms Malone's argument that standards of good taste and decency were imperilled because "advertising profits and administrative convenience must come before all else", TVNZ submitted that this had no real bearing on the issue as it was not a programme standards criterion. To expect TVNZ, a totally commercial entity, to forgo advertising



content over a three-and-a-quarter hour time-span was, in any event, unrealistic.

Finally, TVNZ stressed once again that its Complaints Committee fully respected Ms Malone's genuine concerns. The matter was not taken lightly and it was recognised that the reflection of horrific incidents of human brutality may not sit easily alongside commercial imperatives for some viewers. However upsetting the message, conveyed through the recreation of one of the most despicable incidents in history, the company did not believe there had been a breach of good taste and decency, given the ordinary and normal concept of the statutory provision.

TVNZ's response was referred to Ms Malone for a final comment.

Ms Malone's Response to the Authority

On 12 September Ms Malone commented that:

... the repeated interruption of such a programme with bursts of advertising sent out an unequivocal message of callous indifference to hideous human suffering [which] does not measure up to the good taste and decency that Parliament hoped to safe-guard in passing the Act.

This was the sort of programme - Norman Kirk's funeral was an example and the Queen Mother's State Funeral, when it takes place, would be another - which, because of its uniquely sensitive nature, should, in Mrs Malone's view, "be immune from commercial advertising".

To TVNZ's argument that it is a totally commercial entity and that it is unrealistic to expect it to forgo advertising content over a three-and-a-quarter hour time-span, Mrs Malone argued that if the standards required by law are not upheld, then it is quite beside the point whether it is "unrealistic" in the view of the TVNZ. The fact that the producers of the programme included advertising breaks -not of all of which were utilised - cannot be used by TVNZ as a valid reason for setting aside its statutory obligations. The law does not, Ms Malone argued, demand the maintenance of certain standards "provided this does not clash with the demands of the market-place".

Decision

Ms Malone has argued that TVNZ, in presenting commercials during the screening of "Murderers Among Us: The Story of Simon Weisenthal", breached its statutory responsibility as a broadcaster to maintain in its programmes *and in their presentation*, standards which are consistent with good taste and decency (section 4(1)(a) of the Broadcasting Act 1989). Ms Malone considers that the extreme sensitivity of this mini-series demanded that it be screened without being interrupted by profit-driven advertisements, the mere presence of which trivialised the holocaust.

For its part, TVNZ has denied that it trivialised matters: the company was fully aware



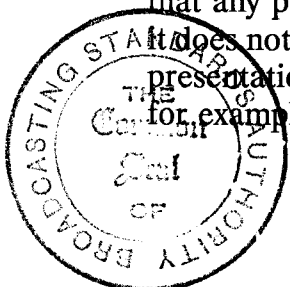
of the sensitive nature of the programme and had gone to great lengths to ensure that the advertisements selected for screening were suitable for inclusion in the built-in advertising breaks. None of the advertisements was so totally inappropriate that its content could have been said to have offended against standards of good taste and decency in being included in one of those breaks. Further, TVNZ denied that the inclusion of any advertising as such meant that commercial realities had taken precedence over the observance of standards of good taste and decency.

In reviewing this complaint, Members were impressed by Ms Malone's sincere concerns and the forcefulness of her arguments. There may well be occasions where community standards of good taste and decency might suggest that a particular programme should, in an ideal world, be presented without interruption - "live" coverage of a state funeral, as suggested by Ms Malone, might indeed have the sensitivity and immediacy to fall into that category. But this is not something that can be decided in abstract. It must always depend on the particular circumstances or context. "Simon Weisenthal" was a documentary mini-series produced overseas with built-in commercial breaks and it is but one of many similar documentaries, mini-series and films concerning the Nazi era that have screened, with commercial breaks, in New Zealand in very recent years. As a journal of historical record, it is at best a moot point whether this mini-series had the sense of immediacy and personal impact which would cause the average viewer to be offended by the intrusion of commercial breaks per se to the point of considering that intrusion to be contrary to prevailing standards of good taste and decency.

In the Authority's view, the interruption of the broadcast of "Simon Weisenthal" by commercial breaks did not trivialise the holocaust or otherwise amount to a breach by the broadcaster of its responsibilities to maintain standards of good taste and decency. In this connection, it should be noted that the Authority was not persuaded to the view that TVNZ allowed the quest for advertising revenue to win out over the maintenance of standards of good taste and decency: the broadcaster's motives in utilising commercial breaks are not relevant in assessing whether standards have or have not been breached by the broadcast of the advertisements.

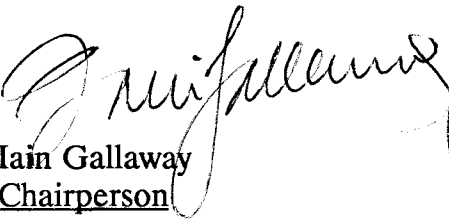
For the reasons set forth above, the Authority declines to uphold the complaint.

Although the inclusion of advertising breaks per se during the broadcast of "Simon Weisenthal" did not constitute a breach of standards of good taste and decency, the Authority wishes to pursue the point raised by TVNZ concerning its checking of the content of the individual advertisements included in those breaks. The Authority accepts that TVNZ appreciated the sensitivity of the programme and exercised care and judgement in the selecting of commercials and that TVNZ did not, furthermore, use all the commercial breaks provided by the programme makers. The computer print-out of the advertisements supplied by TVNZ does not indicate, and Ms Malone did not allege, that any particular advertisement was offensive or against good taste and decency, but it does not require too great a leap of the imagination to foresee circumstances where the presentation of certain advertisements might readily give rise to such an allegation. If, for example, a promotional trailer for 'Allo 'Allo, the comedy series featuring comical



Nazi officers, had butted against part of "Simon Weisenthal", the question of presentational compliance with standards of good taste and decency would have come into clearer focus.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 October 1990