

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 53/91

Dated the 18th day of November 1991

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

Introduction

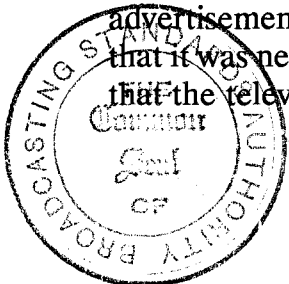
An advertisement featuring Mr Alex Wyllie, the All Black coach, appeared on TV1 on 15 June 1991. While holding a football which carried the silver fern and the words "All Blacks", Mr Wyllie said.

If you know what to do with one of these, then see this Sunday's newspapers for a chance to join me and the boys in black at the World Rugby Cup Final.

The following message then appeared on the screen.

PLACE THE BALL FOR A PLACE AT
THE RUGBY WORLD CUP FINAL
TWICKENHAM ENGLAND
NOVEMBER 2 1991

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd that Mr Wyllie was drawing attention to a Steinlager beer advertisement in the Sunday newspapers. As the newspaper advertisement made it clear that it was necessary to buy Steinlager beer to enter the competition, Mr Turner asserted that the televised advertisement breached standard 5 of the Television Code for Liquor



Advertising which states that no advertisement may refer to a lottery or a competition which requires the purchase of liquor to participate.

TVNZ declined to uphold the complaint as the television advertisement made no mention of any competition which required the purchase of liquor as a condition of entry.

As Mr Turner was dissatisfied with TVNZ's decision, he 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 television advertisement to which the complaint relates and have read the correspondence (summarised in the Appendix). In addition, they have seen the full page advertisement which appeared in the Dominion Sunday Times on 16 June 1991. The Authority has also read a decision dated 17 July 1991 from Radio New Zealand's Complaints Committee on an equivalent standard in the Radio Code following a complaint from GOAL about an advertisement broadcast by ZHFM.

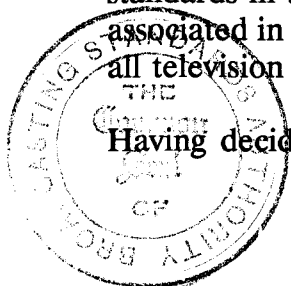
The complaint alleges a breach of standard 5 of the Television Code for Liquor Advertising which reads:

- 5 No advertisement may include reference to any lottery or competition which requires the purchase of liquor to participate.

In order to uphold a complaint that standard 5 has been breached, it is necessary that the programme complained about, first, is an advertisement, secondly, includes reference to a lottery or competition, and thirdly, that the purchase of liquor is a condition of entry into the competition. In the interpretation of this standard adopted by the majority of the Authority, which it shares with Radio New Zealand, it is not necessary for the broadcast advertisement to make an explicit reference to the fact that a liquor purchase is a condition of entry. In the opinion of the majority of the Authority, it is sufficient to meet the standard's requirements if there is reference to a lottery or competition which in fact requires the purchase of liquor as a condition of entry even if that fact is ascertained at a later stage.

It is not in dispute that the programme complained about was an advertisement. Initially, Mr Turner, on GOAL's behalf, maintained that the rugby ball held by Mr Wyllie carried the word "Steinlager". He withdrew that allegation on being advised by TVNZ that the ball carried only the silver fern logo and the words "All Blacks". Nevertheless, as standard 5 refers to an advertisement, unlike most of the other standards in the Television Code for Liquor Advertising which refer to advertisements associated in some way with alcohol, the Authority concluded that standard 5 applied to all television advertisements even though there was no reference to alcohol.

Having decided that standard 5 applied to the advertisement complained about, the



Authority considered the question whether it included a reference to any lottery or competition. It noted that the standard used the word "reference". An examination of the dictionary meanings of "reference", in contrast with the meanings of the verb "to refer" (Concise Oxford - Eighth Edition), disclosed that an "allusion" to a competition or a lottery might be sufficient to justify a finding that that requirement had been met. It decided that the words spoken by Mr Wyllie, in themselves, were insufficient to suggest that the advertisement referred to a lottery or a competition.

However, the first words which appeared on the screen at the conclusion of Mr Wyllie's comment were PLACE THE BALL. The Authority is aware that "place the ball" competitions have appeared regularly in the press over the years. Those words, in the Authority's opinion, clearly denote a competition. Thus, the Authority concluded the advertisement, while it may not have specifically mentioned a competition or a lottery, included a reference to one.

The Authority then considered whether the purchase of liquor was a necessary condition of participation. The television advertisement certainly did not inform viewers of this point. Indeed, as noted above, a viewer may well have been unaware that the advertisement involved alcohol in any way whatsoever. It merely advised viewers to look for some reference to the Rugby World Cup Final in the Sunday papers.

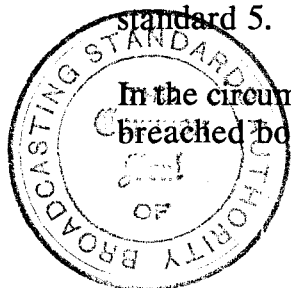
Upon reading a Sunday newspaper, the viewer would find a large advertisement containing similar wording to the television advertisement, a rugby ball carrying the Steinlager logo and reference to the "Steinlager Place the Ball Competition". The newspaper advertisement said the purchase of Steinlager beer in a hotel or from a liquor wholesaler was necessary to acquire an entry form.

Mr Turner, on GOAL's behalf, referred to a RNZ Complaints Committee decision to make the point that the requirement for a liquor purchase on the entry form was sufficient to reach a finding that the third point in the standard had been met. In that case, dealing with a standard with wording similar to standard 5, RNZ had upheld the complaint even though it had been unaware of the entry condition when it accepted the advertisement. RNZ had concluded that the radio standard:

[M]akes no provision regarding ignorance of such a condition by the broadcaster, covers advertisements which are not necessarily advertisements for liquor, and does not specify that the requirement for purchase should be in the advertisement.

As noted above, the majority of the Authority agrees that the Television standard should be interpreted in a similar manner. The fact that an entry to the "Place the Ball" competition required the purchase of alcohol, although that point was not disclosed in the television advertisement, was sufficient to bring the television advertisement within standard 5.

In the circumstances, the majority of the Authority concluded that the advertisement had breached both the letter and the spirit of the Television Code for Liquor Advertising.



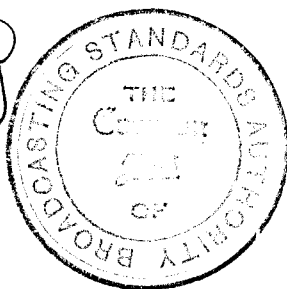
The minority of the Authority adopted an approach which accepted that the liquor advertisement referred to a competition. However, the connection between the television advertisement and a separate newspaper advertisement was regarded as being a tenuous one. Taking into account the present revision of the alcohol advertising codes which is designed to provide a more sensible framework, this perspective maintained, given the ambiguity inherent in the present standard, the present complaint should not be upheld.

For the reasons set forth above, the majority of the Authority upholds the complaint that the advertisement broadcast by Television New Zealand on 15 June 1991 breached standard 5 of the Television Code for Liquor Advertising.

Having upheld the complaint, the Authority decided that, nevertheless, it would be inappropriate to make any order. It reached that conclusion on the basis that the advertisement may have been designed in the belief that it complied with the letter of the Code (if not its spirit), that the breach was of a technical nature rather than one of substance, and finally, as noted above, because the Authority, in consultation with the broadcasters, is reviewing the liquor advertising codes. The review includes a revision of both of the wording and continuing relevance of standard 5.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



18 November 1991

Appendix

GOAL's Complaint to Television New Zealand Limited

The Secretary of the Group Opposed to Advertising of Liquor (GOAL), Mr Cliff Turner, complained to TVNZ Ltd in a letter dated 17 June 1991 about an advertisement which was broadcast by TV1 on 15 June.

The advertisement featured Mr Alex Wyllie, the All Black coach, who, Mr Turner claimed, was holding a rugby ball bearing the word "Steinlager" and who referred to a competition in the following day's newspapers. Mr Turner claimed that the advertisement on television breached standard 5 of the Television Code for Liquor Advertising as:

The newspaper advertisement makes it clear that it is necessary to buy Steinlager beer to gain entry into the competition.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Turner as secretary of GOAL of its Complaints Committee's decision in a letter dated 5 August 1991.

It pointed out that the football which Mr Wyllie held did not carry the word "Steinlager" - only the silver fern logo and the words "All Blacks". Mr Wyllie had said:

If you know what to do with one of these, then see this Sunday's newspapers for a chance to join me and the boys in black at the World Rugby Cup final.

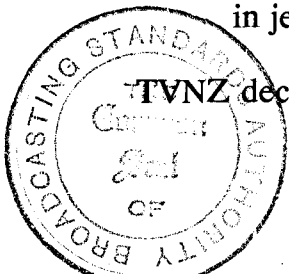
TVNZ said that the following words then appeared on the screen.

PLACE THE BALL FOR A PLACE AT
THE RUGBY WORLD CUP FINAL
TWICKENHAM ENGLAND
NOVEMBER 2 1991

TVNZ continued:

In view of the fact that the advertisement made no mention of any lottery or competition which required the purchase of liquor to participate, let alone any reference to liquor or a liquor company, the Committee had difficulty in understanding how you reached a view that rule 5 of the code could have been in jeopardy.

TVNZ declined to uphold the complaint.



GOAL's Complaint to the Broadcasting Standards Authority

As GOAL was dissatisfied with TVNZ's response, Mr Turner on GOAL's behalf referred the complaint to the Authority on 8 August 1991 under s.8(a) of the Broadcasting Act 1989.

Mr Turner accepted that the word "Steinlager" had not appeared on the football and that the word or the company's logo had not been mentioned or shown in the television advertisement. Although there had been no direct reference to a competition, the advertisement mentioned a prize which implied a competition. Further, the newspaper advertisement, which Mr Turner enclosed, made it clear that the purchase of liquor was a condition for entry. He concluded with a question to the Authority:

If the advertisement was not for a lottery or competition what was it for?

TVNZ's Response to the Authority

TVNZ was asked for its comments on this referral on 12 August and its reply is dated 12 September. The reply began:

At the outset the company would submit that it does not have a case to answer on the basis that the advertisement, for the purposes of invoking section 5 of the code, is not in the nature of a liquor advertisement. There is no mention of alcoholic liquor nor any company that manufactures or sells such beverages.

It continued that the Television Code for Liquor Advertising did not contain a definition of a "liquor advertisement", but the advertisement did not constitute a liquor advertisement within the terms of the companion Code for Advertising Alcoholic Beverages (which applies to radio broadcasters). TVNZ said that a further examination of the Television Code showed that standard 5 only applied if the advertisement in question was a liquor advertisement.

Further, and regardless of whether the advertisement featuring Mr Wyllie was a liquor advertisement, TVNZ maintained that the advertisement had not referred to a lottery which required a liquor purchase as a condition of entry. That aspect of the competition had been revealed in the press advertisement.

TVNZ responded to Mr Turner's question about the point of the advertisement with the comment:

It was designed to draw attention to a Sunday newspaper item (not necessarily an advertisement) to see what sort of a chance there might be for an opportunity to join "Grizz" Wyllie at the World Cup, be it figuratively or literally.



After suggesting a number of possibilities, TVNZ remarked, "Alcohol was never a perceived factor".

It added that, in view of one of the complainant's comments, it had checked its interpretation of the Alcohol Codes with Radio New Zealand and ascertained that there were similarities. It concluded by repeating the comment that it believed that it had no case to answer.

GOAL's Final Comment to the Authority

When asked to comment on TVNZ's reply, in a letter dated 22 September Mr Turner, for GOAL, offered a "common sense" definition of a liquor advertisement which included the promotion of liquor in an advertisement placed by the liquor industry. Such a definition, he added, would capture the advertisement under question as

... it was placed by a section of the liquor industry with a view to increasing the sale of the advertiser's product.

Referring to the wording of the advertisement, Mr Turner maintained that it referred to a competition and thus it breached standard 5.

He referred to a complaint to RNZ from GOAL and requested that the Authority study that decision when determining the current complaint.

