

The Committee of Private Broadcasters did not, in accordance with the Act, give a date for hearing within 14 days so Mr Turner brought his complaint to the Tribunal.

In passing, we should note that Mr Turner did not receive a satisfactory response from Radio Waikato to his complaint and that company continued broadcasting the advertisement after he had telephoned the then manager and pointed out that it was in breach of the rules and the condition of the warrant. It is also noted that the company did not respond to a letter from the Registrar of the Tribunal sent on 10 December 1979, other than to write saying the advertisement had been taken off the air. It appears that the Committee of Private Broadcasters decided, since the offending commercial had been taken off the air, no recommendation would be made. Before Mr Turner could be advised the complaint had been referred to this Tribunal.

The Tribunal was told by the present manager of Radio Waikato that the company had relied on the approval of the advertisement by Radio New Zealand, a division of the Broadcasting Corporation of New Zealand. Mr Fisher, for the warrant holder, submitted the matter was not straight forward and was at least a matter of great doubt as was shown by the acceptance of the script by Radio New Zealand. The advertisement did not mention liquor or its consumption. If it was promoted, it was only promoted in an indirect sense. It was an attempt, perhaps, to divert the market in different directions rather than to promote an increase in the consumption of liquor.

If the Tribunal found that the company was in breach then he submitted it was understandable in a difficult technical area, that the BCNZ had also made the same error and that the advertisement was broadcast only for a limited period.

In endeavouring to encourage people to enter the competition, the purpose of which was to promote the sale of Lion beer, the advertisement promoted the consumption of liquor.

The Tribunal finds that the advertisement promotes the consumption of liquor and is therefore in breach of the condition imposed in the warrant by regulation 14.

The complaint is upheld.

The Tribunal does not intend to initiate proceedings for a penalty under section 83 (3).

However, a private radio station must make its own decisions. If that involves employing a person on its staff competent to vet copy to ensure that it complies with advertising rules, then the company must be prepared to do so. It cannot rely on interpretations made by other stations.

Under section 83 (1) the warrant holder is directed to appoint a person or persons to be responsible for vetting advertising copy and recorded commercials to ensure compliance with the advertising rules and standards.

13/79 1ZH—BCNZ Advertiser: Hamilton Wines and Spirits Limited.

This radio commercial was an invitation to a wine tasting by Hamilton Wines and Spirits Limited in which the name Penfolds was used, according to Mr Turner's complaint.

The Tribunal finds that this advertisement clearly breaches the condition in the warrant imposed by regulation 14 (3). It is obvious that to invite people to come to an occasion where they can drink for no charge is an advertisement which promotes the consumption of liquor.

Furthermore, the use of the words Penfolds Wines Limited is mentioned in the advertisement of a brand name and in breach of the prohibition in that respect in the Radio Standards and Rules.

The complaint is upheld.

Under section 83 (1) the Tribunal directs warrant holders to notify staff responsible for accepting advertisements of the limitations imposed by regulation 14 (3) and of the Radio Rules and Standards as interpreted by this decision.

Com. 14/79—Television Advertiser: Montana Wines Limited.

The complaint was about a 30-second commercial broadcast during 1979 for Ormond Estate Vineyard.

A story board is attached as a Schedule to this decision.

We considered it appropriate to hear any submissions that might be thought appropriate by the advertiser. A representative came to the Tribunal and made submissions with the assistance of a representative of the advertising agency.

We were also supplied with an alleged script for the advertisement but it appears that this was not the current version and it was certainly not the script for the tape we viewed.

Montana Wines Limited submitted that the advertisement fell within the provisions for advertising on behalf of a retail point of sale such as a vineyard. It will be noted, however, that nowhere in the advertisement was the location

of the point of sale indicated other than in a general way which might lead the viewer to suspect that it was on the east coast of the North Island.

Protection was also sought under the provisions of the rule which permits sale outlets which incorporate brand names in their title. The advertisement did not mention the Ormond brand of wines such as Hassendean or Chandos.

No description of the quality of the wine is allowed in an advertisement, and it was claimed that none was given. The mention was of fine grapes.

The Tribunal finds that the purpose of the advertisement was to indicate the quality and it would be impossible to view the advertisement and come to any other decision.

The fourth point made by Montana Wines was that the advertisement could refer to the general merchandise description which was not breached in this case. It was said that the rule stating that advertisements for alcohol must not be presented from licensed premises was not broken. However, the filmed commercial was all about the licensed premises and it is difficult to see the point in a rule which would forbid a live broadcast but permits a film made showing the sale outlet.

The advertiser said the advertisement was not associated with or during programmes directed specifically at children. The commercials were shown between 6 p.m. and 10 p.m.. We suggest that the wine company must be naive to believe that children would not be watching at 6 p.m. No evidence, however, was given that the advertisement was presented in association with, or during programmes directed specifically at children.

This commercial was a clear invitation to attend at the premises and consume wine there. Furthermore the advertisement obviously intended to promote the Ormond brand name and associate quality with the wine produced at the vineyard.

A glass of wine was prominent. The commercial was an invitation for that wine to be drunk.

This was not an advertisement presenting the name of the company in relation to some community service it has performed, but presented the name and brand in association with the producing of wine for sale.

The Tribunal considers the advertisement promotes the consumption of liquor and is clearly in breach of the specific rule relating to brand names.

The Tribunal considers the advertisement was an attempt to get around the existing advertising rules and is not exempted as an advertisement for an outlet.

The complaint is upheld.

In view of the difficulty of interpretation, no action under section 83 (3) will be initiated on this occasion.

A direction under section 83 (1) is given that the corporation notify staff responsible for accepting advertising that the spirit of the rules ought to be observed. Advertisements of the kind dealt with in this decision are clearly in breach of the spirit of the rules and this one has now been found to be in breach of the letter of the rules as well.

Com. 15/79—BCNZ—Advertiser: Lion Breweries Limited

Mr Turner complained about the broadcast from Station 1ZH and from other Radio New Zealand stations of the words "Lion Breweries" associated with horse racing information and results.

We were assisted by a brief statement of evidence from Mr D. J. Fitzgerald, a public relations executive for Lion Breweries Limited, who indicated the intention of the company to combine its radio advertising with print advertisements showing the activities of the company in a number of fields.

Mr Fitzgerald had to admit that although the objective was not to promote the sale of liquor, that might be the consequence. It was primarily an effort to clarify its marketing and to promote corporate image. He conceded that the advertisement would promote the sale of the company's products and about 30 percent of that was liquor sales.

While conceding there is a difficulty of interpretation in relation to the application of the rules to this type of advertising, the Tribunal notes a number of factors:

- (1) That the company has changed its name to identify itself with its product. It seems clear to us that one of the purposes of this is that whenever the company's name is mentioned, at least some of its products are identified in the public mind.
- (2) It can be seen from the information we have from the Lion bottle top advertisement that the name Lion is being promoted as an advertising brand name. If the company had retained its former name, New Zealand Breweries, there would have been a stronger argument that the repetition of the name frequently in association with race results was merely to improve a corporate image, and had nothing to do with the promotion of the sale of its products.