

SOUTH AUCKLAND LAND DISTRICT

- Lake Otumahi N77/297169. Amending name of small lake to correct locality.
 Lake Taikehu N77/288151. Confirming correct name of small lake previously shown as Lake Otumahi.
 Waihaere Stream N77/287150. Amending spelling of stream previously shown as Wai-whereo.

HAWKE'S BAY LAND DISTRICT

- Shine Falls N114/432263. Name of waterfall on Boundary Stream Walkway.

WELLINGTON LAND DISTRICT

- Wainu Beach N137/30.94. Amendment spelling to correct form from Wainui.

CANTERBURY LAND DISTRICT

- Anama S91/9026. Placement of locality name relative to settlement area.

SOUTHLAND LAND DISTRICT

- Trinity Lakes S149/484043. Name for three small lakes in Lake Manapouri area.

NOTE—Unless otherwise shown all references are in terms of NZMS 1.

Dated at Wellington this 23rd day of April 1981.

I. F. STIRLING,
 Surveyor General, Chairman of New Zealand
 Geographic Board.

(L. and S. H.O. 22/2605/3)

Decision No. 6/81

Com. 8/80

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by Clifford Reginald Turner.

WARRANT HOLDER: Broadcasting Corporation of New Zealand (Television New Zealand Network One).

B. H. Slane, Chairman; Lionel R. Sceats, Member; Janet C. Somerville, Member; S. H. Gardiner, Co-opted Member; Robert Boyd-Bell, Co-opted Member.

DECISION

MR TURNER complained that a commercial for Dunhill products was broadcast by Television New Zealand Network One in breach of advertisement rule 1.8 Television Rules and Standards.

The rule is:

Advertisements must not specifically refer to cigarettes, cigarette papers, or cigarette tobacco, or mention the brand name of any such product. However a retailer may indicate that he stocks such products provided there is no elaboration of the statement or reference to brand name.

The advertisement is described in the storyboard appended to this decision.

The Broadcasting Corporation of New Zealand would not uphold Mr Turner's complaint stating:

The Board noted that the Dunhill Company manufactures and distributes a wide selection of products, from jewellery to pipes; that the commercial showed some of these products and showed some of the duty free shops associated with the Dunhill company; and that at no stage during the commercial were any Dunhill cigarettes shown or referred to. The Board held that a company is entitled to advertise its products provided that the rules are observed. In this particular case the Board held that the word "Dunhill", as used in the context of this commercial, could not be construed as referring to a brand of cigarette.

In its submissions to the Tribunal the Corporation said the advertisement made no reference to any other tobacco product marketed in New Zealand under a brand name incorporating the word "Dunhill". There was nothing in the advertisement to connect the advertiser with cigarettes except the use of that word.

The Corporation submitted that to give the interpretation propounded by Mr Turner would have consequences neither intended nor contemplated when the rules were framed. A person or organisation with a name identical with the brand

name of cigarettes, cigarette paper or cigarette tobacco would be prevented from advertising their product.

Also, manufacturers and distributors of cigarette products would be prevented from advertising their products and they would also be prevented from advertising under that name any other product or service provided.

The Tribunal invited the advertiser, Rothmans New Zealand Ltd., to make any submissions they wished to the Tribunal and requested some information. The company submitted that the Dunhill branded goods portrayed in the commercial did not include any cigarettes or other smoking material.

(This is not entirely accurate. The advertisement does in passing show pipes and cigarette lighters.) Rothmans informed us that Dunhill has for many years marketed a wide range of fashion accessories, luggage, furniture, jewellery and clothing of a high quality, its business extending to most countries of the western world.

The business has traditionally included the production and marketing of high quality tobacco products, smoking pipes and other smokers requisites. In New Zealand the Rothmans company is the licensed manufacturer of Dunhill cigarettes and one variety of pipe tobacco; in addition the company imports various Dunhill tobaccos for both domestic and duty free sale. In reply to questions from the Tribunal, the company confirmed that the commercial was screened as part of a wider media campaign for non-cigarette Dunhill products including a magazine advertisement which displayed, among other things, a cigarette lighter. But the company claimed that the advertisement made no direct or oblique reference to cigarettes.

Advertising for Dunhill cigarettes was carried out regularly and separately from the non-cigarette products and included print media, point of sale locations and a variety of sponsorship activities.

The company declined to disclose the extent of the non-cigarette business but indicated that it had expanded significantly over recent years. The company said the name Dunhill was listed twice in the telephone directory in respect of private individuals unknown to the company.

It named other brands it marketed which were also names of persons listed in the Auckland telephone directory.

The company submitted the claim was vexatious.

The Tribunal does not find the complaint to be vexatious. The rule is a simple and straightforward one and we do not consider it should be interpreted in a way to provide a number of unwritten exceptions. The clause clearly contemplates the exclusion, whenever it occurs, of the brand name of cigarettes in any advertisement. The fact that this could cause a hardship to people with the name of Dunhill who wish to advertise is not at this stage a concern of the Tribunal; the Tribunal does not consider it appropriate to interpret the rule on the basis of hypothetical hard cases. It is open to the Rules Committee to adjust the rule and make clear exactly what exceptions might be made.

In this case we did note that one Dunhill distinctive logo was not used but the signs that were shown were not dissimilar to those shown on a cigarette packet forwarded by the complainant. It is interesting to observe that that advertisement for cigarettes showed a lighter as does the jewellery advertisement. There is likely to be some linking in the name in any event.

It may well be that in the interests of eliminating cigarette advertising directly or indirectly those who enacted the rules intended that advertisers such as Rothmans would not be entitled to get their name before the television public as a brand name of cigarettes by advertising other products with the same brand name. That is not to say that the name cannot be used in other media but simply that in the case of radio and television advertisements it is not acceptable.

It is clear that, by the sponsorships referred to by the advertiser in its submissions, "advertising" is obtained in the media, particularly the electronic media, which would not otherwise be acceptable in advertisements. There is however, no evidence to suggest that the development of this advertiser's non-cigarette trade was intended as a way around the restrictions on the advertising of cigarettes on television. Whether it is or not has no bearing on the Tribunal's decision.

It is unsatisfactory for a strong and clear rule to be interpreted in such a way as to introduce a number of exceptions which are not specifically stated. We do not, by the comments we have made, recommend a change in this rule; we simply say that if warrant holders wish to broadcast advertisements for Dunhill products they will have to alter the rule to provide an exception to the rule which states that no advertisements shall contain the brand name of a cigarette. To prevent abuse such a rule would still have to prohibit advertisements if the effect of advertising acceptable products was to advertise non-acceptable products. There lies the difficulty.