

those complaints which it considers to be frivolous, vexatious or malicious.

It is noted that Mr Cullimore accepted Radio Pacific's explanation in respect of the admitted broadcast of an advertisement on Sunday. This was not raised before the Committee of Private Broadcasters and is not therefore a matter on which the Tribunal can make a formal decision.

In summary:

1. The Tribunal upholds the complaint that Radio Pacific Ltd. failed properly to carry out the recommendation of the Committee of Private Broadcasters.

2. It does not uphold the complaints about the illegality of the promotion, the alleged breach of standards of objective journalism or the enticement of listeners into an allegedly illegal promotion.

Mr Cullimore was unhappy that he did not win an on-air apology for his original complaint. We consider it proper that an appropriate statement should now be made on Mr Bickerstaff's programme by Radio Pacific Ltd. That should conclude the matter.

Co-opted Members

The Tribunal co-opted Messrs Wear and Ell as persons whose qualifications and experience were likely to be of assistance to the Tribunal in dealing with the complaint. They took part in the hearing of the complaint and the deliberations of the Tribunal but the decision, in accordance with the Act, is that of the permanent members.

Dated the 18th day of June 1981.

For the Tribunal:

B. H. SLANE, Chairman.

Decision No. 13/81
Com. 25/81

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 (Radio New Zealand—1ZM):

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

DECISION

Mr Turner complained about a radio commercial for the Auckland Racing Club. The following is a transcript of the type of advertisement complained about:

This Saturday at Ellerslie, the Auckland Racing Club's Air New Zealand Meeting. Derby winner Ring the Bell, Auckland Cup winner Drum and a top field clash in the country's richest weight-for-age race: The Air New Zealand Stakes. On selected races the McWilliams Wine Consolation offers a free wine to those with tickets on the fourth horse. First race starts at 5 past 12 this Saturday at Ellerslie. Thoroughbred racing at its finest. Presented by the Auckland Racing Club.

Mr Turner's complaint was that it was in fact an advertisement for McWilliams Wine.

The Corporation did not uphold his complaint saying the advertisement was not in the true sense an advertisement which had been "designed to encourage and/or promote the general consumption of alcoholic liquor". Its intent was to attract people to a race meeting. The fact that ticket holders on horses which came fourth were to be offered a glass of wine was not considered as providing an inducement which would promote the general consumption of liquor.

The Corporation did not consider the commercial fell within the ambit of the rule relating to advertisements associated with alcoholic liquor.

Mr Turner referred the complaint to the Tribunal. He said he believed the commercial, while purporting to be for the Auckland Racing Club, was in fact for McWilliams Wine.

The Broadcasting Corporation told the Tribunal that the intent and tenor of the advertisement clearly placed it outside the definition of advertisements associated with alcohol.

The advertisement was designed to attract people to the races. Should they have the misfortune to invest on a horse which came one away from returning a dividend then they may receive a consolation "prize" of a drink of wine. The Corporation believed that the "prize" could hardly be interpreted as providing an inducement which would "encourage and/or promote the general consumption of alcoholic liquor" as racegoers did not invest on horses in the hope that they would consistently come fourth.

But the test is not whether or not the advertisement is "designed to encourage and/or promote the general consumption" (although that is said to be the broad intention of the rule). The test is whether or not the advertisement complies with every one of the specific requirements (1) to (6). This one does not.

The Corporation said that no payment had been made whether in money or otherwise by McWilliams Wines to the Corporation which, the Corporation said, supported the contention that it was not an alcohol associated advertisement.

It is, in the opinion of the Tribunal, an advertisement which promotes a product to the commercial benefit of the manufacturer and thus is an advertisement for the wine.

It may be thought that the prohibition applies only to advertisements for the sale of alcoholic liquor. Yet plainly the rule is not so limiting. It also applies to those which mention alcoholic liquor or are associated with it.

The advertisement is therefore caught by the rule because it does mention alcoholic liquor and it is associated with alcoholic liquor.

After stating its "broad intention" rule 1.11 goes on:

"Therefore, only those advertisements which conform with the following requirements may be broadcast:

(2) Advertisements must not use brand names as such."

This advertisement does use a brand name (McWilliams) as such.

The complaint is therefore upheld.

We wish to make it clear that the Tribunal has already criticised the form of the rule and that the Tribunal is not responsible for the form or the substance of the rule.

The Tribunal has recently upheld two complaints by Mr Turner against the use of brand names. One related to radio advertising of Lion Breweries, the other to an advertisement for Dunhill on television.

Mr Turner was also justified in making this complaint. The advertisement clearly offended the spirit of the rules which were intended to prevent brand name advertising.

Co-opted Members

Messrs Boyd-Bell and Gardiner were co-opted to the Tribunal as persons whose qualifications or experience were likely to be of assistance to the Tribunal in dealing with the complaint. They took part in the deliberations of the Tribunal but the decision, in accordance with the Act, is that of the permanent members.

Dated the 16th day of June 1981.

For the Tribunal:

B. H. SLANE, Chairman.

Decision No. 14/81
Com. 2/81

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of the Broadcasting Corporation of New Zealand:

B. H. Slane, chairman, Lionel R. Sceats, member, Janet C. Somerville, member.

DIRECTION PURSUANT TO SECTION 83 (1)

The Tribunal has been asked a number of times by Mr C. R. Turner to take action under section 83 (3) Broadcasting Act, against the Broadcasting Corporation following breaches of liquor and other advertising rules. This section empowers the Tribunal to notify the holder of a warrant that it proposes to impose a monetary penalty on him or to revoke or suspend the warrant on the ground that the broadcasting station to which the warrant relates is not being carried on in conformity with the terms and conditions of the warrant.

Subsection (4) provides that if the Tribunal is of the opinion that the station has not been carried on in conformity with the warrant it may, revoke or suspend the warrant for such period as it thinks fit or reduce the term of the warrant or may impose on the holder a monetary penalty not exceeding \$500.

Subsection (5) provides that no warrant held by the Corporation in respect of any broadcasting station can be suspended or revoked except on the request of the Corporation or with the approval of the Minister.

The Tribunal is not satisfied that penal action under section 83 (3) should be instituted but it has examined the position up to date. The Corporation has itself upheld two complaints by Mr Turner. We have this year upheld his complaint in relation to Lion Breweries racing as well as a complaint relating to the broadcasting of the brand name Dunhill in breach of another advertising rule. A complaint about the