

Decision No. 13/84
Com. 1/83

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 2ZB):

Chairman: B. H. Slane.

Members: L. R. Sceats and A. E. Wilson.

Co-opted Members: B. W. Stephenson and G. C. Ell.

DECISION

MR TURNER complained to the Broadcasting Corporation of New Zealand about an advertisement for Kenepuru Liquorland broadcast on 2ZB on 4 December 1982. (A transcript is attached to this decision.) He said that these broadcasts contravened advertising Rule 1.11.4 which reads:

"The advertisement for alcohol must not be broadcast from licensed premises, whether wholesale or retail."

The Board of the Corporation on 8 April 1983 wrote to Mr Turner advising him that the complaint was not upheld by the Corporation. The Corporation said a careful examination showed there was no mention of liquor being for sale or available and therefore there had been no breach of the rule.

The Corporation went on however to say that questions were raised during the discussion about the use of a personality in the promotion. While it was agreed that there had not been any breach of the rules, it was acknowledged that great care was needed when broadcasts from licensed premises were made and in the use of personalities.

The Corporation noted that the Director-General of Radio New Zealand had required any broadcasts from licensed premises to be first approved by the Controller of Programmes. The Corporation considered it was unwise to have used the personality and the Director-General had been made aware of the view.

Mr Turner referred the complaint to the Tribunal. He said the rule stood alone. He said that the rule made no mention of alcohol being for sale or being available; it simply dealt with "the advertisement for alcohol...". The Corporation conceded, he said, that an advertisement for the Kenepuru Liquorland was broadcast and all that is needed to be determined was whether or not that advertisement was for alcohol. Mr Turner argued that there must be an advertisement for something and that a listener "on the Clapham omnibus" would have decided that the something being advertised was alcoholic liquor.

The Corporation maintained its position that the advertisements were not for alcohol but were announcements of the opening of new premises.

The Tribunal has read a transcript of the commercials and notes that apart from the name of the Kenepuru Liquorland, there were no direct statements about the sale of liquor although there were references to "taste-ins" to "valuable products" being given away and "bargains" that were available.

There are several rules which can be summarised for the purpose of this decision as follows:

Rule 1.11.1 governs advertisements made on behalf of a wholesale or retail point of sale and which refer to the availability of liquor for sale for consumption on or off the advertiser's premises. Such advertisements are permitted provided they do not use brand names (other than the brand name incorporated in the name of the advertiser) and no specific prices or description of the quality are included in the advertisement. Such advertisements can also contain descriptions of the point of sale and the service and descriptions of the general range of alcoholic liquor available.

Rule 1.11.2 covers advertisements (other than those made under rule 1.11.1) by a manufacturer or seller of alcoholic liquor or whose name is associated with the making or selling of liquor. They must not, (a) refer to availability of liquor for sale, (b) include brand names (unless included in the advertiser's name), (c) describe the qualities of the liquor sold by the advertiser.

Rule 1.11.3 has no bearing on the present complaint.

Rule 1.11.4 set out above then follows.

Rule 1.11.5 has no relevance to the inquiry to the complaint.

Rule 1.11.6 states advertisements associated with alcohol must not be presented in association with or during programmes directed specifically at children or adolescents.

Within the rules therefore there are references to:

1. Advertisements on behalf of a point of sale which refer to the availability of alcoholic liquor for sale.

2. Advertisements that do not fall into one but which are made on behalf of (*inter alia*) a seller of alcoholic liquor.
3. A prohibition of the broadcasting of an "advertisement for alcohol" from licensed premises.
4. A prohibition on the presentation of advertisements "associated with alcohol" in certain circumstances.

The first question for the Tribunal to decide in this case, is whether or not this was "the advertisement for alcohol" contemplated by rule 1.11.4. (It is accepted that the advertisement was broadcast from licensed premises.)

The decision on the complaint therefore comes down to an interpretation of rules which are not well drafted. The use of phrases which variously "refer to the availability of alcoholic liquor for sale" (and the negative of that) as well as "the advertisement for alcohol" and "advertisements associated with alcohol" is confusing, to say the least.

What is "the advertisement for alcohol" referred to in the rule? Is it an advertisement which refers to the availability of alcoholic liquor for sale (1.11.1) or is it an advertisement on behalf of a company which is associated with the sale of alcoholic liquor without making any reference to its availability for sale (1.11.2)?

If it were to cover all advertisements under Rule 1.11.1 and 1.11.2 it is strangely worded as "for alcohol" not "associated with alcohol" as in Rule 1.11.6. Nevertheless it is possible, depending on the style of the advertisement, to conceive of an advertisement under 1.11.2 which might promote liquor in general enough to be an "advertisement for alcohol".

It is reasonable to assume that ordinarily an advertisement under rule 1.11.2 was intended not to be included since the advertisement is for the company, and may not include any description, brand names (not included in the name of the company) or prices.

It seems that the intention of the Rules Committee was to include only advertisements that fell within 1.11.1 as being inappropriate for broadcast from licensed premises. We are inclined to that as a reasonable interpretation of the rule. Whatever interpretation we arrive at necessarily will appear a legalistic one.

The question then arises whether this advertisement does in fact refer to the availability of alcoholic liquor for sale.

There are references to "taste-ins", various "bargains" that are available and "valuable products actually given away for only one cent" (as distinct from food available). Every advertisement mentions the name of the location as a "Liquorland" or "Liquorland Kenepuru".

We cannot believe that the ordinary listener would not understand that the advertisement of and made from a place with the name of Liquorland is actually not advertising the availability of liquor for sale. We conclude that it was therefore an advertisement which fell within Rule 1.11.1. In those circumstances it was an "advertisement for liquor" under rule 1.11.4 because it referred to the availability of liquor for sale on the premises.

The complaint is therefore upheld.

We should say that we believe that the rules as drafted by the Corporation are not easily followed or understood, nor is the reasoning behind them adequately explained.

We do not consider therefore that the breach by Radio New Zealand is a serious one.

We do not consider it necessary for any further action to ensue as a result of the upholding of this decision, except that it be circulated to those concerned with the acceptance of advertisements.

It would be appropriate for the Corporation to consider what it is endeavouring to achieve by the prohibition on advertising from the point of sale, particularly in the case of radio advertising and to make that intention clear in the rule or in an accompanying note.

Co-opted Members

The Tribunal co-opted Messrs Stephenson and Ell as persons whose qualifications or experience would be useful in the determination of the complaint. They took part in deliberations of the Tribunal but the decision is that of the permanent members.

Dated the 29th day of June 1984.

Signed by the Tribunal:

B. H. SLANE, Chairman.

LIQUORLAND TRACKS

Dick Weir: Hey the crowd here at Liquorland, the new Liquorland Kenepuru standing by for the official opening in just a few minutes at 11 o'clock is just amazing.

The people started arriving I suppose around 10 o'clock or quarter past 10 and now its starting to pack but there's still plenty of room because there are going to be so many things happening between 11 and 2 today but before I tell you about those things, before I tell you about the great activities that are happening today on the Main Road Tawa and Kenepuru Drive at the new Liquorland I'd like to introduce you to one of the guys who is responsible for this fantastic new facility in Tawa-Porirua, and that's Mr Bill Menzies,