

Decision No. 7/84
COM 2/83

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976 and in the matter of a complaint by the TELEVISION PRODUCERS AND DIRECTORS ASSOCIATION:

Warrant Holder: BROADCASTING CORPORATION OF NEW ZEALAND (TELEVISION NEW ZEALAND):

Chairman: B. H. Slane.

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

Co-opted Members: S. H. Gardiner, W. K. Sellwood.

DECISION

ON behalf of the Television Producers and Directors Association (TVPDA), the President, George Andrews, lodged a complaint with the Broadcasting Corporation regarding an advertisement for "Freshup" presented by the New Zealand Cricket Captain Mr Howarth in the course of a satellite television transmission of the Benson & Hedges Cricket Series from Brisbane on the afternoon of Saturday 14 January 1983.

It was complained that the commercial was in breach of advertising rule 1.1 which reads:

"Advertisements shall be clearly distinguishable from other programme material."

Mr Andrews also lodged on behalf of the Association a further complaint relating to a separate commercial featuring another New Zealand cricketer, Richard Hadlee in an advertisement for Toyota.

A transcription of each commercial is appended to this decision.

The Broadcasting Corporation did not uphold the complaint finding that the advertisements was clearly distinguishable from the coverage of the cricket matches. It said there was an obvious difference between the live presentation and commentary of an actual event and the techniques of the filmed commercial insert during a natural break in the action of the game. Television was also entitled to assume that viewers of the game possessed at least an elementary grasp of the rules governing it and were familiar with the long established pattern of placement of advertising.

The complainant did not accept there was a clear distinction between the advertisements and the programme material and did not agree with the Corporation's conclusion about the assumption it said television was entitled to make.

In submissions to the Tribunal, Mr Andrews said that available figures suggested a substantial audience of women over 40 were watching those games at that time and that no assumption could be made that they were all established followers of cricket who were aware both of the game and of the pattern of television coverage.

The Corporation's view was that there was a difference in the visual quality of the opening of the commercial which was filmed. Mr Howarth was first seen at the crease and not in all-white cricket gear which clearly contrasted with the coloured clothing worn by the players in the one-day series.

"Freshup" Commercial

Members of the Tribunal had seen this commercial broadcast and had also an opportunity to view a tape of it. The Tribunal finds that the opening commercial content was of such a nature that a clear distinction in the viewer's mind between the end of the programme and the beginning of the commercial was unlikely for the first 10 seconds of the commercial.

It is unlikely that the commercial was produced with the intention of butting it to the programme content although any advertiser would welcome the result of such a link.

The Tribunal accepts the advertisements are packaged together in groups and that such groups are usually recognisable as separate from the programme material, usually because there is a natural break in the action to allow for the interruption of the programme and the commencement of the commercials or other material. However in the case of this cricket series the action was continuous and the programme material flowed into the commercials without any visual or oral indication that the commentary was ceasing and the commercials were starting. It is obvious that the advertiser benefited from the resulting viewer confusion.

Guidelines and practices are often established by precedents such as this. We consider it important that no further interpretations of the rules by the Corporation under commercial or other pressures should lead to similar types of commercial presentation.

The complaint is upheld in so far as it relates to the placement of the "Freshup" commercial at the beginning of a group of commercials and upon the immediate switching from the live commentary.

The complaint would not have been upheld but for its placement at the beginning of a group of commercials during the cricket broadcasts.

"Toyota" commercial

This commercial was far less likely to confuse the viewer, even though a cricket personality was featured. The opening shot was in slow motion and then there was a cut to the "Toyota" nameplate on the car with the jingle which mentioned the commercial product.

This advertisement did not confuse. The immediate commencement of music and the sight of the vehicle diminished any chance of confusion.

The complaint in respect of the "Toyota" commercial is therefore not upheld.

Co-opted members

Messrs Gardiner and Sellwood were co-opted as persons whose qualifications and experience would be of assistance to the Tribunal in dealing with the complaint. They participated in the hearing and the consideration of the complaint but the decision, in accordance with the Act, is that of the permanent members.

Dated the 30th day of March 1984.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 3/84
BRO 71-72/83

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1977 and in the matter of applications by the BROADCASTING CORPORATION OF NEW ZEALAND for amendments to warrants to AM-40, (3YZ) and AM-41 (3ZA):

Chairman: B. H. Slane.

Member: L. R. Sceats.

Hearing: Wellington on the 15th day of February 1984.

Counsel: G. R. Rowe for applicant.

DECISION

Amendments Applied For

1. An amendment to the terms of warrant AM-40 (3YZ) by deleting condition 3, viz:

The warrant holder shall establish relay stations at Cape Foulwind NZMS 1, S23-24/968731 for Westport (2kW, 1458 kHz) and Reefton NZMS 1, S38/350278 (0.1 kW, 1521 kHz).

and substituting the following condition:

The warrant holder shall establish relay stations at Cape Foulwind NZMS 1, S23-24/968731 for Westport (0.4 kW, 1458 kHz) and Reefton NZMS 1, S38/350278 (0.1 kW, 1521 kHz).

2. An amendment to the terms of warrant AM-41 (3ZA) by deleting condition 4, viz:

The warrant holder shall establish relay stations at Cape Foulwind, NZMS 1, S23-24/968731 for Westport (2 kW, 1458 kHz) and Reefton NZMS 1, S38/350278 (0.1 kW, 1521 kHz) to broadcast a commercial programme during the hours when the relay stations are not relaying 3YZ.

and substituting the following conditions:

4. The warrant holder shall establish a relay station at Cape Foulwind. NZMS 1, S23-24/968731 for Westport (2 kW, 1287 kHz).

5. The warrant holder shall establish a relay station at Reefton NZMS 1, S32/350278 (0.1 kW, 1521 kHz) to broadcast a commercial programme during the hours when it is not relaying 3YZ.

Decision

Radio New Zealand broadcasts a mixed commercial and non-commercial programme to Westport from a transmitter at Cape Foulwind.

Between 9 a.m. and 2 p.m. weekdays and from midday to midnight on Sundays that transmitter relays the National Programme. For the balance of the time the commercial community programme from 3AZ is relayed.

The amendments were sought in order to establish a second relay transmitter at Cape Foulwind which would enable a full time relay of the National Programme as well as full time relay of the 3ZA programme, for listeners in the Buller region.

For the Corporation H. W. Gough, Development Manager (Planning) in Radio New Zealand, explained that it was intended to add a new relay station of 400 watts which would broadcast on the existing frequency of 3YW (1458 kHz). It would carry the National Programme.

The existing transmitter would adopt a new frequency of 1287 kHz and would broadcast the 3ZA community commercial service.