

Co-opted Members:

Mrs R. M. James and Mrs M. Bell were co-opted 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 consideration of the complaint and the deliberations of the Tribunal, but the decision is that of the permanent members.

Dated this 18th day of October 1986.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Decision No. 24/86
Com. 4/85

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by ANTHONY JOHN SIMPSON of Wellington, writer:

Warrant Holder: THE BROADCASTING CORPORATION OF NEW ZEALAND, Television One:

Chairman: B. H. Slane

Members: Ann E. Wilson and Robert Boyd-Bell.

Co-opted Members: S. H. Gardiner and W. Sellwood.

DECISION

MR Simpson lodged a formal complaint in respect of some programmes which he said he did "because recent developments in your programming raise interesting philosophical questions and it seems to me that the use of the formal complaints machinery enables these to be discussed in a fruitful way."

A considerable correspondence ensued and it is not necessary for the Tribunal to traverse that.

It is sufficient to say that the Tribunal has dealt with the complaint as being in respect of a programme *Alison Holst Cooks* and specifically in relation to a repeat series of that programme in 1985.

The first screening of the programme was on a Friday, then a non-commercial day.

In referring the complaint to the Tribunal, when it was not upheld by the corporation, Mr Simpson indicated that he was dissatisfied in one respect and he summarised it as follows:

"(i) If money changed hands to pay the corporation for doing this then this means that in one sense the entire programme, e.g., *Alison Holst Cooks*, is an advertisement for the book because the promotion of the book which is a commercial property, the sales of which, are presumably increased by such featuring becomes indistinguishable from the programme. The two are an entity. This seems to me to offend against the requirement of advertising rule 1.1 which requires that advertisements should be clearly distinguishable from other programme material.

(ii) In an opinion given in June 1984 the BCNZ office solicitor is recorded as being of the view that a voice-over given at the end of a programme advising of the availability of books is a community service acknowledgement. With respect to Mr Hudson I cannot concur in this view. Even if no money has changed hands this is still in my submission a commercial announcement. It clearly promotes a commercial product. If money does change hands then in my view there is absolutely no doubt that the practise conforms to the definition of an advertising programme in the Broadcasting Act itself. I have no knowledge of course as to whether the publishers or distributors of the book or any other person pays to have this information conveyed. But above all else it seems inappropriate for commercial information of this sort to be conveyed on Sundays or on Channel One on Fridays which are both I believe non-commercial periods. At least that is how I understand the BCNZ warrants."

He later added the following comment:

"Would you please note that my complaint was not solely concerned with the promotion of commercial products on non-commercial nights, but with the matter of a failure to distinguish between programmes and commercial messages also."

The definition of 'advertising programme' in the Broadcasting Act is:

"'Advertising programme' means a programme or part of a programme intended to promote the interests of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made, whether in money or otherwise."

The advertisement rules contained in the Television Standards and Rules, include the following:

"'Sponsored material' means any matter (other than advertising programmes) which is not purchased by a television service or produced wholly at the cost of the service.

'Sponsor' means a person or organisation meeting the cost of sponsored material.

1.1 Advertisements shall be clearly distinguishable from other programme material.

4.1 Sponsored material may be broadcast by a television service provided that it does not relinquish editorial rights or control over the extent and the presentation of such material, and provided that the association of a sponsor with a programme is acknowledged in the programme credits.

5.1 The total amount of time given to advertisements shall not exceed 9 minutes per hour averaged over a days programmes.

5.2 In any 2-hour period there shall not be more than 20 minutes of advertising time."

The following facts emerge from the correspondence.

The programme, as was acknowledged in the programme credits, was presented "in association with Beckett Publishing and the Potato Board". This sponsorship acknowledgement is a requirement under rule 4.1 and a viewing of the programme will show that TVNZ did not relinquish editorial rights or control over the extent and presentation of the material. The corporation refers the Tribunal to the definition of sponsored material that it is any matter which is not purchased by a television service or produced wholly at the cost of a service.

Television New Zealand Enterprises issued a "TV Tie-in" pamphlet which referred to books which may have a link with television series and is regarded as an advertising vehicle. For consideration paid by BCNZ Enterprises which covers the cost of the leaflet, books are promoted in the leaflet and distributed to the New Zealand book trade. The corporation claims that the leaflet itself is the advertising vehicle and not the programmes in question.

At the end of the programme the following statement is made:

"The recipes demonstrated in this programme also appear in the book *Alison Holst Cooks*."

In its response to the complaint the corporation told the Tribunal that it did not consider there was any featuring of books associated with particular programmes. It denied that there was an invitation to purchase the book and explained that the wording of the announcement was intended as a community service because, based on past experience, viewers telephoned or wrote in asking how they could get copies of the recipes and it was considered to be in the public interest to include in the programme an appropriate announcement. There was no mention in the announcement of the publisher or any retailer from whom the cookery book could be bought. It was a practise considered akin to that of indicating on screen the name of the novel from which a major television drama series may have been adapted. There was no exhortation to go out and buy the book nor to seek it out in a library. The Corporation submitted that such brief wording did not convert the 15 minutes cooking programme into an advertisement. There was no intention to promote the interests of any person or to promote any product or service for the commercial advantage of any person. No payment was specifically made for the statement to be made.

The corporation argued that as there was no advertisement then there could have been no breach of the rule requiring an advertisement to be clearly distinguishable from other programme material.

The Broadcasting Act defines an advertising programme clearly. The Broadcasting Rules clearly define sponsored material. We take it therefore that as the corporation clearly states the programme is sponsored material, the programme was not purchased by the television service or produced wholly at the cost of the service. Therefore the sponsors, the Potato Board and Beckett Publishing, have met at least part of the costs of the sponsored material.

It would be naive to suggest that they did so as a community service rather than because they considered it would promote the interests of the Potato Board or potatoes or books published by Beckett Publishing. The Tribunal considers payment is made to the corporation when there is a contribution to the cost of production of the programme, when that programme is intended to promote the interests of any person (i.e., the sponsors) or their products for the commercial advantage of the sponsors.

The Tribunal therefore finds that a programme partly paid for by sponsors with the intention of promoting their own interests or the interests of their product to a commercial advantage of any person is an advertising programme.

The fact that sponsored material is permitted by the advertising rules cannot modify the definition of an advertising programme."