

The tribunal has seen a tape of a mock-up of the context in which the Jeremy Coney advertisement was screened. Such a mock-up was needed either because the exact segment of play at the time mentioned by the complainant could not be identified or because a tape of that part of the play did not exist. Television New Zealand reconstructed a likely cricket sequence to butt on to the commercial, and shots of Jeremy Coney himself playing were found for the purpose.

The tribunal considers that the first 9-second segment of the advertisement was of such a nature that the distinction between the end of the live programme and the beginning of the advertisement was unclear and could well have caused confusion in viewers' minds. For this reason this part of the complaint is upheld.

One important element is the audio effect. The commercial started with an "open microphone" effect and the first shot was accompanied by a crowd roar. This was so similar to what preceded it that the crowd sounds were likely to recall the viewer's attention by a suggestion of the sound of further play in the same match in the absence of any clear end to the coverage of the match. At that stage a scene with similarly garbed players would be seen.

An earlier decision of this tribunal, No. 7/84, to which both Mr Andrews and the BCNZ referred, was about a similar complaint, also brought by Mr Andrews, which was upheld in part. In that case a commercial was also placed at the beginning of a commercial break upon the switch-over from a live cricket commentary.

In this present case, action shots from different cricket matches at the beginning of the advertisement were shown immediately after the satellite broadcast of the live coverage. In the first and third sequences the players were wearing whites. In the second of the three clips the players were wearing coloured clothing similar to that being worn by players in the match being telecast.

In its earlier decision the tribunal stated: "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 pressure should lead to similar types of commercial presentation." The tribunal considers that the precedent established in that decision has not been followed in this case in the way that it should have been.

The commercial does not appear to have been produced specifically with the intention of butting it on to such a live programme—its showing at other times clearly indicates this—though some advertisers might welcome such a link and may even seek it. Also, the tribunal acknowledges that the rule does not preclude a sport-related advertisement from being shown at the time of live coverage of that sport. Nor need the real purpose or message of the advertisement be at the beginning of it. Further, the 30-second commercial which does not interrupt the flow of play may well be welcomed by the viewer.

But the rule states that advertisements must be clearly distinguishable and it is for this reason the complaint is upheld. Therefore, when another quite different commercial cannot be shown first, possible solutions may be to require distinctive lead-ins to such advertisements, quite different from the play, if they are to be used in live coverage; at the least a very short programme identification break could be screened first, although this may not necessarily eliminate confusion.

The tribunal hopes this problem can be resolved without further complaint. While we accept much of the BCNZ's argument, we do not believe that the essence of the tribunal's previous decision was complied with. As the BCNZ itself pointed out, it is a question of the viewer's interpretation and in this respect, the tribunal notes that the Broadcasting Rules Committee in the preamble to the advertisement rules states that "The detailed rules lay down the minimum standards to be observed, and broadcasters are expected to follow the spirit as well as the letter of these rules".

Mazda Advertisement

The second complaint was about a Mazda promotion/commercial which began with an announcement promoting a programme covering a forthcoming international women's softball tournament,

also sponsored by Mazda. The specific complainant was: "That the Mazda Commercial 'passed itself off' as a programme promotion and was also but for different reasons in breach of the rule." [Rule 1.1]

In this instance, Mr Andrews' objection was that rule 1.1 was breached not because of the placement of the advertisement, but because of the material within the commercial itself. Mr Andrews stated that normal programme promotions come within the definition of "other programme material". Mr Andrews complained that: "The rules prevent an advertiser and a broadcaster from passing off what is in effect an advertisement as being programme material."

He claimed that it was an encouragement to watch the softball programme in exactly the same way that both channels promote programmes which are not sponsored. The gist of Mr Andrews' complaint was that as promotion of the programme and of Mazda's cars were combined in one 30 second package, it was not clear the promotion was part of a car advertisement, until the pictures of cars came at the end of the advertisement.

The BCNZ's response was that viewers were not misled into assuming that they were seeing a promotion for an unsponsored event and that it was clearly a commercial for the car company and its association with the softball tournament. The BCNZ stated that: "The public is well aware that normal promotional trailers for programmes do not include visual and verbal selling of the advertiser's product." (The promotion part, even before the cars were shown, mentioned and then showed the Mazda name clearly 8-10 seconds into the commercial.)

The tribunal is of the view that this part of the complaint should not be upheld.

The basic purpose of the rule is to try to prevent the viewer being misled into believing that an advertisement or commercial is part of the programme or programmes she or he has switched on to view. It is considered necessary for the protection of those programmes and of those watching them, to have such a rule preventing the viewer from being misled.

A programme promotion is, in the ordinary sense, a commercial for a forthcoming programme. It attempts to capture the viewer's attention and persuade the viewer to watch the programme. It is for the possible benefit of the viewer but it benefits the TV channel too if the viewer watches.

Therefore programme promotions and advertisements are of broadly the same character of promotional material between which it is not necessary to distinguish for the purpose of the rule. They both set out to "sell" something and are quite different from the scheduled programmes and filler material.

On the question of possible confusion in the viewer's mind, we consider she or he needs to be able to distinguish between attempts to sell or promote something on the one hand, and the programme material being watched for information, education or entertainment on the other. No difficulty in making this fundamental distinction would have arisen in this case and it is for this reason that this part of the complaint is not upheld.

As the part of the promotion/commercial advertising the car was of broadly the same character as the programme promotional material which preceded it, it seems to the tribunal that a clear distinction between the two within the promotion/commercial did not have to be made.

Co-opted Members

The tribunal co-opted Mr S. H. Gardiner and Mr Wayne K. Sellwood as persons whose qualifications or experience were likely to be of assistance in dealing with the complaint. They took part in the deliberations of the tribunal but the decision is that of the permanent members.

Dated this 5th day of March 1987.

Signed for the Tribunal:

B. H. SLANE, Chairman.

Notice by Commerce Commission of Clearances of Merger and Takeover Proposals

NOTICE is hereby given that the Commerce Commission has given clearance to the following merger and takeover proposals in terms of section 66 (3) (a) of the Commerce Act 1986.

Person by or on behalf of whom notice was given in terms of sections 66 (1) or 67 (1) of the Commerce Act 1986	Proposal	Date of Clearance	Commission Reference
Elders Pastoral Ltd.	Elders Pastoral Ltd. may acquire the assets of the stock and station and rural servicing business of the Farmers' Co-operative Society of New Zealand Ltd.	10 March 1987	AUT/MT-E1/2

Dated at Wellington this 11th day of March 1987.

D. T. WOGAN, for Commerce Commission.