

*The Complaint to Radio New Zealand Ltd.*

C. R. Turner complained to the Chief Executive of Radio New Zealand, in a letter dated the 6th day of March 1989, that "the sports news following the 9 a.m. news on Station 1ZH linked items of sports news with the advertisers Toyota, New Zealand Cheese, Hannahs and the TAB." Mr Turner went on to state his belief that the Broadcasting Tribunal's decision 45/88 ruled that the practice of linking advertisers' names to items of sports news is a breach of the station's warrant if that occurs on a Sunday.

His formal complaint was "about the association of news items with advertisers' names" on the Sunday mentioned.

*Radio New Zealand's Response to the Complainant*

In a letter dated the 10th day of April 1989, the Chief Executive replied that the complaint was considered by the Board of Radio New Zealand Ltd. on the 5th day of April 1989.

She stated that an audition of the programme showed that there were only 2, not 4, acknowledgments in the bulletin concerned, namely to Toyota and New Zealand Cheese.

The contractual documents between Radio New Zealand and Toyota and Radio New Zealand and New Zealand Cheese "fail to support a view that any payment was made specifically for that part of a programme in which reference was made to them and which was broadcast on the day and at the time in question", she said.

Accordingly the RNZ Board found that the 2 mentions were not advertisements within the statutory definition and that there was, as a consequence, no breach of the warrant. The board declined to uphold the complaint.

*Mr Turner's Complaint to the Tribunal*

Mr Turner then brought his complaint to the Tribunal: "During the sports news, items were linked to advertisers. I believe this was a breach of the rules about Sunday advertising." Mr Turner asserted that Radio New Zealand was ignoring the Tribunal's decision 45/88 (dated 21 December 1988) and that Radio New Zealand had suggested in its reply to him that no payment was made by Toyota or New Zealand Cheese for mention of their names during the sports news bulletin in question.

*Radio New Zealand's Response to the Tribunal*

In its submission to the Tribunal, Radio New Zealand stated that it had taken into account the provisions of the Broadcasting Act 1976 and of the station's warrant concerning Sunday advertising: advertising rule 3.1: Tribunal decision 45/88 and the contractual documents between Radio New Zealand and Toyota and New Zealand Cheese respectively. Legal advice was obtained.

The contractual position was described in letters between Radio New Zealand and the advertising agents for Toyota and New Zealand Cheese which were enclosed with Radio New Zealand's submission. In respect of both, Radio New Zealand submitted that they "are directed towards coverage of events, and neither makes provision specifically for name association on a Sunday".

In conclusion, Radio New Zealand stated that "in neither the case of New Zealand Cheese nor that of Toyota can it be said that there was any specific payment for the parts of the programme complained of which were broadcast on the 5th day of March 9.05 a.m."

As they were not specifically paid for, Radio New Zealand submitted that the name associations were not advertisements within the statutory definition.

*Mr Turner's Comment on Radio New Zealand's Response to the Tribunal*

The gist of Mr Turner's comment was that it was absurd to suggest that they were not advertisements just because a

Sunday broadcast was not specifically mentioned in the contract documents.

*Consideration*

The Tribunal's decision 45/88 was on a complaint by Mr Turner who objected to the words "Rugby news in association with Steinlager" being broadcast on a Sunday. That complaint was upheld by the Tribunal.

The Tribunal there noted that, "What is important is whether an advertisement may be broadcast on a Sunday. It is the Tribunal's conclusion that the sponsorship statement is an advertisement within the meaning of the Act. It is clearly part of a contractual package offered to Steinlager Ltd. by Radio New Zealand which includes the Sunday credits. It therefore clearly falls within the definition of an "advertising programme" since it promotes the interests of Steinlager New Zealand Ltd. and payment is made for it."

We do not here traverse again the exposition of rule 3.1 and the relevant parts of the Act and the condition in 1ZH's warrant set out in decision 45/88 or the other decisions of the Tribunal, namely 41/88, 43/88 and 3/89. We do mention however Radio New Zealand's contention that "decision 45/88 is limited to its own facts, and cannot necessarily be regarded as extending to a sponsorship arrangement where Sunday naming is not part of the contractual package . . .".

*Decision*

In decision 45/88, the existence of a specific provision for Sunday credits in the Steinlager contract was seen by the Tribunal as supporting the view taken by the Tribunal in that particular case that it was an advertisement. But the existence of a specific provision for credits on a Sunday was an evidentiary factor and was not regarded as essential or conclusive. The absence of a specific contractual provision for Sunday credits does not mean that, when a sponsorship credit is given on Sunday, it is not an advertisement. In the Tribunal's view, Radio New Zealand goes too far in suggesting that if a mention on Sunday is not spelt out in the contract, the mention is therefore not an advertisement but an acknowledgment altogether devoid of the character of a paid advertisement.

The fundamental aspect to be determined in this case is whether or not the credit was paid for, directly or indirectly. If it was an advertisement at any time on any day, its status would not change on a Sunday.

The Tribunal therefore had to consider the letter from Radio New Zealand to Toyota's agents which was signed and accepted by them. This letter stated:

"Confirming details of our recent meeting. As in past years Toyota will receive name association with all cricket news on the Community Network, in return for an annual commitment of \$[amount deleted] nett on Radio New Zealand stations.

"Toyota will also receive full name association with cricket coverage on YCAM, in return for a commitment of \$[amount deleted] nett on that network.

"The period of expenditure to be 1 October 1988 to 30 September 1989."

Because the first part of the letter plainly sets out that Toyota would pay for name associations and as the words "all cricket news on the Community Network" are used, the Tribunal concludes that any credits on a Sunday included. This part of the letter is directed not at "coverage of events" (as on YCAM) as RNZ submitted to us but "all cricket news".

Because the first part of the letter plainly sets out that Toyota would pay for name associations and as the words "all cricket news on the Community Network" are used, the Tribunal concludes that any credits on a Sunday were included. This part of the letter is directed not at "coverage of events" (as on