

YCAM) as Radio New Zealand submitted to us but "all cricket news".

In the absence of any evidence that a mention on this (or any) Sunday was explicitly excluded and was made free and not pursuant to the contract, it seems clear that the Toyota contract covers all mentions including any broadcast on a Sunday.

We therefore uphold the complaint in respect of the Toyota mention.

The letter from the agents for New Zealand Cheese to Radio New Zealand is somewhat different. It states:

"This letter serves to confirm the details of our telephone conversation on Thursday, 31 March.

Buttermark have agreed to spend \$[amount deleted] on Radio New Zealand stations this year in exchange for New Zealand Cheese rugby sponsorship and Fernleaf butter netball sponsorship.

As discussed, coverage of the Fernleaf Tennis Classic and Nutrimetics Tournament will also carry Fernleaf name association."

This letter is not as precise in respect of the Rugby/New Zealand Cheese name association as the Cricket/Toyota letter is. It simply states that a sum of money will be paid in exchange for rugby sponsorship. In view of our decision in respect of Toyota, we did not consider any further inquiry into any possible detailed arrangement to be justified. So we do not uphold this part of the complaint simply because it is not clear that the sponsorship which was paid for included name association.

Finally, we accept that Radio New Zealand's transcript showed that only 'Toyota' and 'New Zealand Cheese' were mentioned and not 'Hannahs' and 'the TAB'. Mr Turner could well have been mistaken because of a mention of the last 2 at some other time.

We do not consider any public action is required in view of the changes in advertising rules, now in force, permitting Sunday advertising.

#### *Co-opted Members*

Messrs Carter and Stephenson were co-opted as persons whose qualifications and experience were likely to be of assistance to the Tribunal. They took part in the deliberations of the Tribunal but the decision is that of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.

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Decision No. 50/89

COM 7/89

### **Before the Broadcasting Tribunal**

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **Clifford Reginald Turner** of Hamilton:

*Warrant Holder: Television New Zealand Ltd.:*

*Chairman: Judge B. H. Slane.*

*Member: Robert Boyd-Bell.*

*Co-opted Members: R. M. Carter and B. W. Stephenson.*

#### **Decision**

Dated the 29th day of November 1989.

#### *Introduction*

On 1 March 1989 at about 10 p.m., Television New Zealand broadcast on TV1 an advertisement for a softball series sponsored by Lion Red Ltd. The advertisement had a background song:

"Yeah you know what it takes, you're ready to dart, take em all on. You got the measure of your man and you know that you can go all the way.

Give it to them. Yeah give 'em a taste, give 'em, give 'em a taste of kiwi. Show them you're the best."

Then followed a voice-over: "Lion Red series softball. The best of the clubs. The biggest of the kiwis.

Give 'em a taste."

While the song was played, pictures of softballers in action were shown and the words "Lion Red series" appeared along the bottom of the screen. The words "Lion Red" were in prominent capital letters and the word "series" in smaller letters. There was a softball between "Lion Red" and "series".

While the voice-over played, the words "Lion Red" (softball) "series" again appeared on screen together with the words "Give 'em a taste" splashed across the screen.

#### *Mr Turner's Complaint to Television New Zealand Ltd.*

Mr Turner complained to Television New Zealand in a letter dated 2 March 1989 that the simultaneous appearance of the words "Give 'em a taste" and "Lion Red" constituted a breach of television advertising rules 1.11.2 (1) and 1.11.2 (2). Mr Turner wrote that there was a strong implication that the taste to be given was a taste of Lion Red beer.

Mr Turner claimed in his letter to TVNZ that previously the BCNZ "defended this type of advertisement by saying that a statement of sponsorship was the aim of the advertisement and that thus the rules pertaining to liquor advertising did not apply. The Broadcasting Tribunal's recent decision on a complaint about an advertisement which linked a brewer to the New Zealand cricket team had established that advertisements of this type must conform to the liquor advertising rules."

#### *Television New Zealand's Response*

TVNZ wrote on 20 April 1989 that the Television New Zealand Ltd. Complaints Committee had considered this complaint at its meeting on 5 April 1989.

TVNZ stated that Mr Turner's reference to a Tribunal decision and a statement of sponsorship previously used by the BCNZ did not appear to be relevant to the 2 rules in question. As the advertisement did not make any reference to the availability of liquor for sale or supply, rule 1.11.2 (1) was not breached. With regard to rule 1.11.2 (2), the committee observed that "it was made clear that the advertiser was Lion Red Ltd. and that the Lion Red caption was clearly intended to comply with the requirement that if a brand name is to be used it should be incorporated in or be identical with the name of the advertiser".

The Complaints Committee did not uphold the complaint but did have some reservations about the juxtaposition of the final caption ("Give 'em a taste") when associated with the brand name. This viewpoint was to be conveyed to the advertiser.

#### *Mr Turner's Complaint to the Broadcasting Tribunal*

On 27 April 1989, Mr Turner brought his complaint to the Broadcasting Tribunal. He repeated his complaint that the words "Give 'em a taste" and "Lion Red" appeared simultaneously and he now stated that the abbreviation "Ltd." did not appear after the words "Lion Red". It seemed to him that the intention of the advertiser was to urge viewers to buy Lion Red beer.

#### *Television New Zealand Ltd.'s Response to the Tribunal*

The essence of Television New Zealand's submission dated 19 May 1989 to us on the complaint was that, notwithstanding the omission of the word "Ltd.", there was still no doubt that the advertisement included a statement of sponsorship by Lion Red Ltd. and would not be taken as a reference to sponsorship by Lion Red beer itself or an encouragement to viewers to buy or drink it.