



TEN 10 Sydney

Advertisement for cigarettes

The complaint

On 11 April 2000 the ABA received a written complaint concerning the broadcast of the 'Australian Ladies Masters Golf Tournament' by Network TEN over the weekend of 26 and 27 February 2000.

The complainant alleged that TEN continually showed Alpine signage and that TEN interviewed the sales manager of the tobacco manufacturing company, making particular reference to the company's name.

Relevant licence conditions

Clause 7(1)(a) of Schedule 2 to the *Broadcasting Services Act 1992*, prohibits the broadcast of tobacco advertisements. It states, in part:

7 (1) Each commercial television broadcasting licence is subject to the following conditions:

- (a) the licensee, will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act.

The Broadcasting Services Act makes it clear that for the purposes of determining whether a tobacco advertisement has been broadcast, the ABA is to be guided by the *Tobacco Advertising Prohibition Act 1992*.

Tobacco Advertising Prohibition Act 1992

In general terms, the Tobacco Advertising Prohibition Act prohibits the broadcast of tobacco advertisements. Exception is made when broadcast of the advertisement is an accidental or incidental accompaniment to the broadcasting of other matter and the licensee does not receive benefit or payment for the broadcast.

Section 8, Tobacco Advertising Prohibition Act

defines 'broadcast' as follows:

8 'broadcast' means transmit by means of:

- (a) a broadcasting service within the meaning of *the Broadcasting Services Act 1992*; or
- (b) something that would be such a broadcasting service if the definition of 'broadcasting service' in subsection 6(1) of that Act were amended by omitting all the words from and including 'but does not include' to the end of the definition'.

'Tobacco advertisement' is defined in section 9(1) of the Tobacco Advertising Prohibition Act:

9 (1) Subject to this section, for the purposes of this Act, a tobacco advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) smoking; or
- (b) the purchase or use of a tobacco product or a range or tobacco products; or
- (c) the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* in respect of goods that are or include tobacco products; or
- (d) the whole or a part of a design that is registered under the *Designs Act 1906* in respect of articles that are or include tobacco products; or
- (e) the whole or a part of the name of a person:
 - (i) who is a manufacturer of tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products; or
- (f) any other words (for example the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco



products (whether also closely associated with other kinds or products).

13 (1) A person must not, knowingly or recklessly, broadcast a tobacco advertisement in Australia or Norfolk Island on or after 1 July 1993 otherwise than as permitted by section 11. Penalty: 120 penalty units.

(2) This section has effect subject to section 26A (which relates to broadcast of tobacco advertisements in an aircraft during a flight).

11 A person may broadcast a tobacco advertisement if:

- (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting the other matter).

Decision

The ABA determined that on 27 February 2000 Network TEN broadcast a tobacco advertisement during the Australian Ladies Masters Golf Tournament.

The ABA believed that the interview with the Sales Director of the tobacco manufacturer Philip Morris promoted the corporate image of, drew attention to and publicised Philip Morris and their brand Alpine and was therefore a tobacco advertisement under the Tobacco Advertising Prohibition Act.

It is established that the reason the Sales Director was interviewed was due to his employment with Philip Morris. TEN initiated the interview with a line of questioning which focused on the successful sponsorship of the tournament and the outcomes of this successful sponsorship.

The ABA considered that the announcement of the long term sponsorship of the tournament by Philip Morris, served to promote the company as philanthropic. The discussion that followed in relation to the increased popularity of women's golf occurred within the established context of the sponsorship and goodwill of Philip Morris towards women's golf.

TEN's submission to the ABA indicated that in the conduct of its operations it knew of its obligations with respect to program content compliance and was cognisant of the licence condition prohibiting the broadcast of tobacco advertisements. TEN stated that it took the precaution of addressing these matters with the tournament promoter.

The ABA was of the view that the precautions taken by TEN did not adequately address the fundamental problems surrounding a live-to-air interview with the representative of a tobacco manufacturing company. The ABA decided that the tobacco advertisement was broadcast knowingly and recklessly.

The ABA was also required to determine whether the broadcast of the tobacco advertisement was accidental or incidental to the broadcast of other matter. The 'other matter' to which the advertisement must have been broadcast accidentally or incidentally is the Australian Ladies Masters Golf Tournament.

The broadcast of the tobacco advertisement did not happen by chance, but through a deliberate act. The broadcast of the interview with the Philip Morris representative was a completely self-contained segment, which was broadcast independently of the broadcast of the golfing action. Further, the interview was not an incidental accompaniment to the broadcast of the golfing tournament as the interview was not able to incorporate the immediate action that was occurring in the tournament. In order to broadcast the tournament it was not necessary to broadcast the interview.

The ABA is of the view that broadcast of the tobacco advertisement in the form of an interview with a representative of Philip Morris was not an accidental or incidental accompaniment to the broadcast of the Australian Ladies Masters Golf Tournament.

Action taken

TEN outlined the future action it intended to take to prevent similar breaches:

- a written summary of the ABA's findings in relation to the operation of the tobacco advertising prohibitions will be provided to TEN sports management and on-air sports presenters and interviewers;
- a training session on the operation of the tobacco advertising prohibitions and ABA's findings will be conducted for TEN sports management and on-air sports presenters and interviewers; and
- a session on the tobacco advertising prohibitions and the ABA's findings will be included in Network TEN's National Compliance Training Program in each of the five stations in the TEN Network during 2001.