

TV Advertising Standards — “time for some clarification”

The Australian Broadcasting Tribunal has acknowledged that clarification of the Television Advertising Standards is desirable following its recent decision in the so-called “Richard Nixon look-alike Case”.

The Tribunal indicated in its decision on this matter that it proposed to consult relevant industry bodies as soon as possible regarding suitable amendment to the Standards. Here is the ABT's official Decisions and Reasons:

Re: An Advertisement Produced by the Campaign Palace for Sanyo Australia Pty. Ltd. for the product Betacord

DECISIONS AND REASONS

1. The Federation of Australian Commercial Television Stations (“FACTS”) operates a Commercials Acceptance Division. This Division (“CAD”) examines advertisements proposed to be telecast on commercial television stations and advises stations on their suitability for television having regard to the legal and other requirements that apply to such advertisements.

2. The Campaign Palace, an advertising agency, has had correspondence and discussions with CAD regarding a television advertisement for Sanyo Australia Pty. Ltd. (“Sanyo”) which involves the depiction of an impersonation of former President Richard Nixon of the United States in advertising Sanyo's video-cassette recorder, Betacord. CAD refused to give its approval to the advertisement as it did not consider, because of the use of the impersonation of Richard Nixon, that it was suitable for television. The Campaign Palace and Sanyo objected to that refusal and appealed according to the appellate procedure of FACTS for a reconsideration of the refusal.

3. The advertisement has been referred to the Tribunal which has viewed it in the presence of a director of the Campaign Palace and its legal adviser and subsequently with executives of FACTS and CAD and their legal adviser. The parties have also made submissions to the Tribunal about the advertisement.

4. Section 100 of the Broadcasting and Television Act 1942 (as amended) (“the Act”) provides that although a licensee may televise advertisements it shall comply with such standards as the Tribunal shall determine with respect to the televising of advertisements.

Section 129 provides that the provisions of the Act are deemed to be incorporated in a commercial television licence as terms and conditions of the licence. Effectively, therefore, compliance with the Advertising Standards is a condition of a licence.

Section 101 of the Act provides:

“Where the Tribunal has reason to believe that any matter (including an advertisement) which it is proposed to . . . televise is of an objectionable nature, that matter shall be subject to such censorship as the Tribunal determines.”

5. In refusing to approve the advertisement CAD has referred to a number of paragraphs of the Advertising Standards:

(i) Paragraph 38(a) — Advertising matter must comply with the laws of the Commonwealth and the States relating thereto. It is argued by CAD that the advertisement could be defamatory.

(ii) Paragraph 38(g) — Advertisements should be presented with courtesy and good taste. CAD maintains that the impersonation of Richard Nixon for commercial purposes without his permission is not in good taste.

(iii) Paragraph 38(i) — Advertisements should contain no claims intended to disparage . . . institutions. It could be argued that the advertisement disparages the office of President of the United States.

(iv) Paragraph 40(b) — A licensee may refuse to televise advertising matter which he has good reason to believe would be objectionable to a substantial and responsible section of the community. It could be argued that the impersonation of such a public figure in an advertisement is objectionable.

6. The Campaign Palace has maintained that the advertisement does not contravene these or any other Standards. It argues that the particular depiction is not objectionable or in bad taste and was not intended and does not disparage the office of the Presidency of the United States. It acknowledges that the impersonation of a leading figure may in other circumstances contravene the Standards — e.g. the Prime Minister of Australia — but maintains that each case should

be judged on its merits and that the depiction of an impersonation of a real person, per se, in an advertisement does not necessarily contravene the Standards.

7. Although the Television Advertising Standards do not specifically deal with this question it should be noted that the Radio Advertising Standards do so:

Paragraph 32(f) — “The voices of real persons must not be simulated unless permission has been obtained from the person whose voice it is proposed to simulate.”

It is clear that the advertisement depicts an impersonation of Richard Nixon and in the Tribunal's view in a context associating him with the Presidency of the United States. It is not disputed that his permission has not been obtained for such a depiction. Is this type use of public figures permissible under the Act and the Standards?

8. In the Tribunal's view the impersonation of real persons in advertisements for commercial goods and services without their permission is not in the public interest. It would be objectionable to a substantial section of the community and it would not be in accordance with community attitudes to individual rights of privacy. Therefore the Tribunal considers that the impersonation of Richard Nixon in this advertisement constitutes matter of an objectionable nature and should be subject to censorship pursuant to s.101 of the Act. The Tribunal determines that the advertisement as submitted and viewed by it shall not be telecast.

9. The Tribunal acknowledges that clarification of the Television Advertising Standards is desirable and proposes to consult with relevant industry bodies as soon as possible regarding suitable amendments to the Standards. In conclusion the Tribunal accepts that the Campaign Palace has endeavoured to produce the advertisement so as to conform with their understanding of the relevant industry guidelines.

Dated 16 April 1981 For the Tribunal, David Jones — Chairman, Catharine Weigall — Member, K.A. Archer — Member.