

SMITH-WEST AND DISCOVERY NZ - 2022-110 (20 DECEMBER 2022)

Members

- Susie Staley MNZM (Chair)
- John Gillespie
- Tupe Solomon-Tanoa'i
- Aroha Beck

Dated

20 December 2022

Complainant

- Peter Smith-West

Number

2022-110

Programme

[Newshub Live at 6pm](#)

Broadcaster

[Discovery NZ Ltd T/A Warner Bros. Discovery](#)

Channel/Station

[Three](#)

Standards

- [Codebook 2022: Promotion of Illegal or Antisocial Behaviour](#)

The broadcast

[1] An item on *Newshub Live at 6pm* on 21 September 2022 reported on artist Tāme Iti correcting his name on an artwork by Dean Proudfoot. The artwork, which is displayed in a Wellington hotel, included the words: 'TAMA PERFORMS IN A NEW ZEALAND LANDSCAPE.'

[2] The item showed excerpts of a video Iti posted to social media of himself correcting the artwork, including him walking into the hotel and correcting his name by crossing out 'TAMA' and painting 'TĀME' above it. Iti states:

They call me Tame, Tama. Somehow or another, you know. Such a simple name.

[3] The reporter noted:

[The owner of the painting] is yet to respond to Newshub, but told staff as far as he's concerned, it's straight out vandalism and he says he expects Police to prosecute him, though Police have not received a complaint. But experts believe this may just add value to the artwork due to the incident. Artwork creator Dean Proudfoot agrees, saying in a statement, 'I unreservedly apologise to Tāme Iti. There was no offence intended...'

[4] The item concluded with the following dialogue:

Reporter: Tāme Iti didn't want to speak to Newshub.

Iti: [excerpt from video showing Iti leaving the hotel] Thank you. Have a nice day.

Reporter: But it's clear he just wanted his name spelled correctly.

Host 1: Fair enough.

Host 2: Totally fair enough eh?

Host 1: Yeah, absolutely.

The complaint

[5] Peter Smith-West complained the broadcast breached the promotion of illegal or antisocial behaviour standard of the Code of Broadcasting Standards in New Zealand. He argued the host's comment 'fair enough' after the item indicated their belief that Iti's actions were justified, and thereby encouraged illegal behaviour (alleged vandalism).

The broadcaster's response

[6] Warner Bros. Discovery (**WBD**) did not uphold Smith-West's complaint for the following reasons:

- 'The news presenters routinely engage in brief discussions about news stories between items in the 6 pm bulletin. On this occasion, both presenters offered viewers their personal opinion that Iti's act of correcting the spelling of his name on a painting by another artist was "fair enough." ...viewers would have understood the comments were their personal opinion, to which they are entitled.'

- It doubted 'any reasonable viewer would interpret the Broadcast as encouraging illegal or antisocial behaviour which is what this standard is designed to protect against.'

The standard

[7] The purpose of the promotion of illegal or antisocial behaviour standard¹ is to prevent broadcasts that encourage audiences to break the law, or are otherwise likely to promote criminal or serious antisocial activity.² Context, and the audience's ability to exercise choice and control, are crucial in assessing a programme's likely practical effect.³

Our analysis

[8] We have watched the broadcast and read the correspondence listed in the Appendix.

[9] As a starting point, we considered the right to freedom of expression. It is our role to weigh up the right to freedom of expression against any harm potentially caused by the broadcast. We may only intervene when the limitation on the right to freedom of expression is demonstrably justified in a free and democratic society.⁴

[10] The promotion of illegal or antisocial behaviour standard does not stop broadcasters from discussing or depicting criminal behaviour or other law-breaking, even if they do not explicitly condemn it.⁵ The standard is concerned with broadcasts that actively undermine, or promote disobedience of the law or legal processes.⁶ In some cases, broadcasts which condone criminal activity or present it as positive or humorous may have this effect.⁷

[11] In this case, the complainant was concerned the host's comment 'fair enough' in response to the item encouraged illegal behaviour (alleged vandalism). While we have considered the complainant's concerns, we have not found any actual or potential harm of the nature described which outweighs the public interest in the broadcast, or justifies limiting the broadcaster's freedom of expression.

[12] Context is crucial in assessing the programme's likely practical effect. We consider the following contextual factors to be particularly relevant:

- *Newshub Live at 6pm* is an unclassified news and current affairs programme.
- The host's comment 'fair enough' was brief, off the cuff, and tangential to the item. It was also limited to Iti's particular actions, and there was no overt promotion of illegal activity or encouragement to take similar action.
- The comment constituted the host's own opinion in relation to Iti wanting his name spelt correctly, and reasonable viewers would recognise it as such.

- There was a high level of public interest in the item, which reported on a prominent New Zealand and Māori artist correcting his misspelt name on a painting, in an environment of growing recognition of the importance of te reo Māori in Aotearoa New Zealand.

[13] Taking into account the above factors and the high public interest in the subject matter, we find the host's comment did not breach the promotion of illegal or antisocial behaviour standard.

For the above reasons the Authority does not uphold the complaint.

Signed for and on behalf of the Authority

Susie Staley
Chair
20 December 2022

Appendix

The correspondence listed below was received and considered by the Authority when it determined this complaint:

- 1 Peter Smith-West's formal complaint to Warner Bros. Discovery – 23 September 2022
- 2 WBD's decision on complaint – 6 October 2022
- 3 Smith-West's referral to the Authority – 7 October 2022
- 4 WBD's confirmation of no further comments – 12 October 2022

¹ Standard 3, Code of Broadcasting Standards in New Zealand

² Commentary, Standard 3, Code of Broadcasting Standards in New Zealand at page 11

³ Guideline 3.1

⁴ Introduction, Code of Broadcasting Standards in New Zealand at page 4

⁵ Commentary, Standard 3, Code of Broadcasting Standards in New Zealand at page 11

⁶ As above

⁷ As above