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ABT FIGHTS TO DEFEND ITS POWERS

By DAVID SHIRES

THE win by advertising agency Saatchi & Saatchi Compton (Vic) Pty Ltd over the Australian Broadcasting Tribunal in the Federal Court over Australian content in television commercials may ultimately change the regulatory framework of television advertising in Australia.

The tribunal is today expected to decide whether to appeal against the decision handed down last Friday by Justice Beaumont.

He ruled that the tribunal did not have the power to determine the level of local content in such commercials following action by Saatchi in July relating to a series of commercials produced for its client British Airways.

The Beaumont decision may undermine the tribunal's power to dictate levels of local content relating to both television programming and commercials, thus revealing what may prove to be a significant gap in the charter of the tribunal.

Already the case is being examined by the advertising and television industries for ramifications far beyond the specific case brought by Saatchi.

The Advertising Federation of Australia, which looks set to become a major party to the dispute, is urging extreme caution among its members in terms of acting on the judgment, given that the essence of Justice Beaumont's decision was that the tribunal had no power to adjudicate on matters requiring quantitative adjudication such as the content of a commercial.

"In my opinion, the ordinary meaning of 'standards' and its context suggest that it is the quality of the product, rather than its quantity, that is the subject matter of the tribunal's power of determination . . ." Mr Justice Beaumont said.

"In my view, in the exercise of its power under section 100 (4) (of the Broadcasting and Television Act) the tribunal may regulate the content of the advertised material in terms of its quality in the sense of what is regarded as socially desirable or acceptable."

The judgment may affect other areas under examination by the tribunal, in particular liquor industry advertising which has drawn criticism from the tribunal on the basis of "lifestyle" content which would seem to enter the realm of qualitative judgment.

Such opinions from the tribunal, according to the Court, are valid.

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The problem is, how does the tribunal dictate qualitative standards other than in terms of quantity?

Is the prohibition of the guzzling of a can of beer in a 30-second commercial a quantitative judgement or a qualitative one? For that matter, is the minimum requirement of 104 hours of Australian drama productions a year for Australian commercial television stations a qualitative standard expressed in terms of quantity so that it may be regulated, or a quantitative standard beyond the realm of the tribunal's jurisdiction?

In the face of such questions, the AFA sees three options facing the tribunal:

- Appeal against Justice Beaumont's decision.
- Examine its powers to discover other avenues of approach to the issue.
- Call on the Federal Government for urgent legislative correction, most probably in the form of a redefinition of its powers.

For once, the AFA has sided largely with the tribunal on the specific issue of local content.

"The AFA strongly supports the continuation of a prohibition on imported commercials with the proviso that provision be made for Australian crews shooting overseas," the federal director of the AFA, Mr Bruce Cormack, said yesterday.

He said the AFA did not believe that some of the tribunal's recent decisions had been "entirely realistic," but that the fragile nature of the Australian commercial production industry required special consideration.

The AFA has already closely re-examined its policy as a result of the CER agreement with New Zealand, and has accepted New Zealand advertising as an exception to the rules.

But that is all the ground that it is prepared to give, saying that while the wording of the tribunal's standards on this issue could be clearer, the spirit should remain.

It would appear that Justice Beaumont has established a sticky situation for the tribunal in its dealings with the advertising and television industries.

But it is equally sticky for the industries involved which — given the importance they place on the self-regulatory nature of their operations — are distinctly worried by the possibility of the tribunal resorting to an acquisition of further powers to stay on top of the situation.

Barring the outcome of an appeal, that situation may prove to be the only option, since at this stage the Government has no intention of removing the responsibility from the tribunal no matter how sticky the situation.

"The Governments' traditional position is that the executive level of Government should not impose standards directly," a spokesman for the Minister for Communications, Mr Duffy, said yesterday — a stance given credence by a demonstrated reluctance of the Government to intervene in other tribunal-centred issues despite applications for it to do so by industry bodies.

A statement by the managing director of Saatchi in Victoria, Mr Peter Loughnane, defended the agency's action.

The statement said the agency had had no choice but to challenge the tribunal in the Federal Court.

"Right up until the time of the trial Saatchi & Saatchi Compton indicated to the ABT its willingness to give it every assistance, even to the extent of flying agency personnel from London, to talk to it," the statement said.

"However, Saatchi & Saatchi Compton advised the tribunal that it was concerned that another advertising agency may be seeking to use an ABT inquiry to gain a commercial advantage for itself and/or its client and sought an assurance from the ABT that this would not be allowed to happen.

"However, the ABT could not give such an assurance," the agency said.

"We at Saatchi & Saatchi Compton wish to add that we sought the judgment of the Federal Court only in relation to the specific case.

"We did not wish to take our case to court and now that the court has given its decision, we can only trust that the future decisions on new rules or legislation to govern our industry will be brought about properly only after full consultation with all the parties involved.

"We see this as necessary to allow a clear system operating with reason, fairness and accountability."

The decision of Justice Beaumont is already the subject of much discussion in the industry. Already multinational and transnational advertisers and advertising agencies are looking at ways in which local content rules might be reformed.

Wang Computer is one major advertiser which has already demonstrated its displeasure at the tribunal's policy on the matter.

The marketing communications manager in Australia for Wang, Mr Steve Chambers, last month railed at the tribunal's policy, claiming that all it meant was that less money could be spent on corporate sponsorship within the local community.

Mr Chambers was launching a new $2 million advertising campaign for the company in Australia, the cost of which had risen considerably as a result of not being able to screen three Wang commercials shot in the UK and screening in all other 162 countries where Wang has a presence.

"The tribunal has taken away our right to pictorialise our world-wide logo," Mr Chambers said at the time. "The Australian ad is one we are proud of but we did not want to have to re-invent the wheel."

Speaking from Auckland this week, Mr Chambers predictably welcomed the decision of the Federal Court — but only conditionally.

"It's a shame it's come to this because we've ended up with two schools of thought which may be unable to further communicate," he said.

He suggested a compromise might be the only solution: for every commercial coming into the country, a local commercial should be produced.

"As a transnational company, that would be ideal for us," he said.

Wang has, to some extent, already adopted this philosophy. Faced with the prospect of having to produce a commercial here, it added the Australian version to those being screened overseas as an integral part of its global strategy.