

COMPLAINT NUMBER	16/332
COMPLAINANT	N. Broomfield
ADVERTISER	Spark New Zealand
ADVERTISEMENT	Spark Television
DATE OF MEETING	11 October 2016
OUTCOME	Not Upheld

SUMMARY

The 15-second television advertisement for Spark New Zealand showed a man driving a car with a child beside him. They are singing and occasionally look briefly at each other.

The Complainant was concerned the man driving and singing is not watching the road as he turns to face the child a number of times.

The Complaints Board ruled the complaint was Not Upheld

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 12 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society and whether it contained, unless justifiable on educational and social grounds, any visual presentation or any description of dangerous or illegal practices or situations which encouraged a disregard for safety.

The Complaints Board ruled the complaint was Not Upheld

The Complaints Board first considered the Complainant's concern that the Spark advertisement showed a man driving with a child, singing and not watching the road as he turns to face the child a number of times.

The Complaints Board then turned to the Advertiser's response. The Advertiser said that the advertisement formed part of a campaign telling the story of a solo father, "Big Tony," looking to connect with his daughter through music. The Advertiser said in part: "We see Big Tony and his daughter achieving that connection by having a harmless singalong in the car to her favourite song.

The Advertiser said that during production and filming of the advertisement Spark had paid particular attention to safe driving practices, including the New Zealand Transport Agency's

guidelines on safe driving.” The Advertiser’s view was that the advertisement did not depict anything that presented dangerous or illegal practices or situations which encourage a disregard for safety.

The Advertiser brought to the attention of the Complaints Board that a subsequent advertisement in the campaign featured “Big Tony” explaining the moment shared with his daughter and making the unscripted comment “because of Spotify... we both go crazy in the car while I’m still focussed on the road.” The Advertiser also said the advertisement had been filmed in a controlled environment on a closed road and in the lead-up to shooting and that “a thorough pre-production process was undertaken by certified industry professionals in order to ensure safety of everyone involved.”

The Complaints Board noted that the advertisement had been approved by the Commercial Approvals Bureau (CAB). The CAB, responding on behalf of the media, said that the Spark commercial had been approved on July 7, 2016 with a “G” classification, allowing it to play to all appropriate audiences. The CAB’s opinion was that the driving behaviour shown was reasonable and typical and could not be found to be in breach of New Zealand laws.

The Complaints Board noted the Advertiser’s comprehensive enumeration of methods used to ensure safety was considered during production and filming of the advertisement. The Complaints Board agreed that the glances father and daughter made to each other while singing did not divert the driver’s attention for more than a second at a time and this conformed, as the Advertiser stated, to the New Zealand Transport Agency’s guideline on driving safely that says anything that diverts a driver’s attention for more than two seconds can significantly increase the likelihood of a crash. The Complaints Board observed that had the driver and the girl been singing and glancing at each other for, say, an hour there might have been a safety issue but the interlude pictured was brief.

The Complaints Board decided the advertisement did not breach Basic Principle 4 of the Code of Ethics and did not encourage a disregard for safety and cross a line that put it in breach of Rule 12: Safety.

Accordingly, the Complaints Board ruled to Not Uphold the complaint.

DESCRIPTION OF ADVERTISEMENT

The 15-second Spark television advertisement purported to show a solo father connecting with his daughter through music. It showed a close-up of the pair singing while the father drives. They face each other briefly and happily at intervals and at the fourth time this happens the words “Magic happens everyday” flash on the screen. This is followed by the Spotify logo and the word Spotify then the Spark logo with the word Spark beside it.

COMPLAINT FROM N. BROOMFIELD

The Spark advert shows a man driving with a child he is singing and is not watching the road. He turns to face the child a number of times.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 12: Safety – Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

RESPONSE FROM ADVERTISER, SPARK NEW ZEALAND

1. We refer to your complaint notification letter of 15 September 2016. Spark New Zealand Trading Limited ("**Spark**") and its advertising agency, Colenso BBDO Limited, were responsible for creating and placing the television advertisement which is the subject of this complaint ("**Advertisement**"). We respond on behalf of both parties.
2. Spark acknowledges the sincere concerns of the complainant that the Advertisement shows a man (aka "**Big Tony**") driving with a child, singing and turning to face the child a number of times.

The Codes

3. Your letter referred to Basic Principle 4 and Rule 12 from the Code of Ethics as the relevant sections of the Advertising Codes of Practice ("Codes") in relation to this complaint. The purpose of Basic Principle 4 is to ensure that advertisements are prepared with a due sense of social responsibility to consumers and society. The purpose of Rule 12 is to prevent the presentation of dangerous or illegal practices or situations which encourage a disregard for safety.
4. Spark is a responsible advertiser and fully supports the objectives and functions of the Advertising Standards Authority as well as the meaning and intent of the Codes.
5. We set out below a brief description of the Advertisement and the reasons why the Advertisement complies with Basic Principle 4 and Rule 12 as well as the spirit and intention of the Codes.

Everyday moments of magic

6. The Advertisement forms part of the same brand campaign referenced in our letter relating to Complaint 16/239. It continues the story of a solo dad looking to connect with his daughter through music. We see Big Tony and his daughter achieving that connection by having a harmless singalong in the car to her favourite song.

Safety

7. During production and filming of the Advertisement Spark paid particular attention to safe driving practices, including the New Zealand Transport Agency's guidelines on safe driving. The Advertisement does not depict anything that presents dangerous or illegal practices or situations which encourage a disregard for safety because:
 - a. Listening to music and singing while driving is common and not prohibited. Many families engage in car riding singalong, which forms an important part of a family bonding experience;
 - b. The scene where Big Tony diverts his attention from the road is fleeting. Importantly, Big Tony does not direct his attention away from the road for more than one second at a time;

- c. Big Tony's hands are clearly positioned on the steering wheel at all times;
 - d. The mobile phone playing the song is clearly positioned in a secured hands free car kit to ensure it is not providing a distraction to the driver; and
 - e. The New Zealand Transport Agency's guidelines on driving safely state anything that diverts a driver's attention for more than two seconds can significantly increase the likelihood of a crash or near crash. As stated above, the Advertisement does not show Big Tony diverting attention to his daughter for more than one second at a time.
8. Accordingly, we do not believe the Advertisement breaches Rule 12 of the Code of Ethics.
9. Given that the Advertisement does not show dangerous or illegal practices nor encourage a disregard for safety, we do not believe it can be said that it was prepared without a due sense of social responsibility. As a result, we do not believe that it breaches Basic Principle 4 either.
10. The Advertisement was approved by the TVCAB.
11. We accordingly request a ruling from the Board that the complaint is not upheld.
12. Lastly, we point out that:
- a. The Advertisement was also followed up by another 30" advertisement featuring 'Big Tony' further explaining the moment shared with his daughter. In this advertisement he explains the scene and also further qualifies his safe driving with the unscripted comment "because of Spotify ... we both go crazy in the car - while I'm still focused on the road". (Ref www.youtube.com/watch?v=Z44kEjiPyr8); and
 - b. The Advertisement was filmed in a controlled environment on a closed road. In the lead up to shooting a thorough pre-production process was undertaken by certified industry professionals in order to ensure safety of everyone involved

RESPONSE FROM COMMERCIAL APPROVALS BUREAU ON BEHALF OF THE MEDIA

We have been asked to respond to this complaint under the following codes:

Code of Ethics – Basic Principle 4, Rule 12

CAB approved this Spark commercial on 07/07/16 with a 'G' classification, allowing it to play to all appropriate audiences.

The commercial advertises the Spotify music service. It is 15 seconds long.

A sole complainant believes this commercial presents a threat to safety.

In CAB's opinion the driving behaviour shown is reasonable, typical, and could not be found in breach of New Zealand's laws. The average New Zealand viewer will appreciate this fact, and a not upheld decision will reflect that position.