

<b>COMPLAINT NUMBER</b>	17/310
<b>COMPLAINANT</b>	M. Gregan
<b>ADVERTISER</b>	DB Breweries Limited
<b>ADVERTISEMENT</b>	DB Breweries Limited, Digital Marketing
<b>DATE OF MEETING</b>	10 October 2017
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The video advertisement for DB Breweries Limited on its website [www.dbexportbeer.co.nz](http://www.dbexportbeer.co.nz) was compiled in a documentary style to promote the beer bottle sand machines which the Advertiser claimed can help the global sand shortage by producing a glass sand substitute product.

The Complainant said the style of the advertisement was misleading and deceptive.

The Complaints Board confirmed the beer bottle sand machines were real and the Advertiser had provided evidence of the beach sand shortage and its approach to helping find a solution.

The Complaints Board ruled the advertisement had not reached the threshold to breach the Code for Advertising and Promotion of Alcohol or the Code for Environmental Claims. The Complaints Board agreed the qualified claims had been substantiated and the advertisement had been prepared with the required standard of social responsibility to consumers and to society.

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 Principle 1, Guideline 1 (h) of the Code for Advertising and Promotion of Alcohol and Principle 1 and 2 of the Code for Environmental Claims. This required the Complaints Board to consider whether the advertisement of alcohol contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. The Complaints Board was also asked to consider whether any environmental claims made were misleading or deceptive or likely to deceive or mislead the consumer. and that the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

## **The Complaints Board ruled the complaint was Not Upheld.**

### **The Complaint**

The Complainant said the documentary style advertisement was misleading and deceptive and questioned the effect this product would have on the environment. The Complainant referred to an earlier Complaints Board Decision 17/102 about a 30 second advertisement promoting the same idea. That decision referred to the level of hyperbole in the shorter advertisement. The Complainant said the documentary style video was not hyperbolic and was likely to mislead people.

### **The Advertiser Response**

The Advertiser denied that any codes had been breached by the advertisement. The Advertiser summarised the overall message of the advertisement saying that making glass sand will help replenish a diminishing resource. The Advertiser said there is nothing misleading in the advertisement and that they offered a real solution to a real problem. The Advertiser stated they used qualified claims using wording such as contributing, and reduces rather than making absolute statements.

### **The Complaints Board Discussion**

The Complaints Board began by discussing the consumer take out of the advertisement. It agreed the style of the advertisement left some uncertainty as to whether it was a documentary or a mockumentary. The Complaints Board then took into account the digital placement of the advertisement on [www.dbexport.co.nz](http://www.dbexport.co.nz) which allowed any consumer who was uncertain about the beer bottle sand project to investigate further. The Complaints Board noted the facts quoted regarding sand shortages had traceable sources.

The Complaints Board noted the beer bottle sand machines were real, producing 200 grams of sand substitute from each bottle recycled. The Complaints Board agreed the Advertiser's claim "to help protect their beaches, New Zealanders can now drink a beer" contained a level of exaggeration and noted the Advertiser's response which said in part: "By its very nature as a beach sand substitute, any use of DB Export Beer Bottle Sand will to some extent reduce the reliance on beach sand. It follows that "this project will keep the sand on our beaches" and "reduce the country's dependence on beach derived sand".

The Complaints Board said the advertisement was not likely to mislead or deceive the consumer and was not in breach of Guideline 1(h) of the Code for Advertising and Promotion of Alcohol.

The Complaints Board also considered the advertisement against the Code for Environmental Claims and agreed the creation of glass sand substitute material, which was then utilised as an alternative to beach sand, provided the necessary level of support for the qualified claims made in the advertisement.

The Complaints Board agreed there was a level of tongue in cheek hyperbole around the concept of drinking beer to save New Zealand's beaches consistent with the DB Export branding and the various campaigns it had run in the past but this did not make the advertisement misleading.

The Complaints Board ruled the advertisement had not reached the threshold to breach the Code for Advertising and Promotion of Alcohol and was not misleading or deceptive. The Complaints Board agreed the qualified environmental claims in the advertisement had been supported and the advertisement had been prepared with the required standard of social responsibility to consumers and to society.

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

---

## DESCRIPTION OF ADVERTISEMENT

The video advertisement for DB Breweries Limited on its website [www.dbexportbeer.co.nz](http://www.dbexportbeer.co.nz) was compiled in a documentary style to promote the beer bottle sand machines which the Advertiser claimed can help the global sand shortage by producing a glass sand substitute product.

## COMPLAINT FROM M GREGAN

I believe the marketing video promoted by DB Export, DB Beer Bottle Sand, is misleading. The 1.53 minute video is shot in a documentary-style, providing news clips about the world's sand retreating. It states that 'amazingly, the solution to the sand shortage could be to drink beer', 'this project will keep the sand on our beaches', 'reducing the country's dependence on beach derived sand' and 'to make a difference, to help protect their beaches, New Zealanders can now drink a beer'. When I saw a short version of the ad on tv I thought it was a joke. I then came across this advertisement. I have read your earlier decision 17/102, where you said, "the hyperbolic claims in the latest advertisement were similar and were unlikely to mislead or deceive the consumer about the positive effect the product would have on the environment". However, I believe, that due to this documentary-style advertisement is misleading. I do not believe that people watching this ad will view this as hyperbolic content. I believe that it breaches Principle 1 h of the ASA code for advertising and promotion of alcohol. If your ruling on this complaint disagrees, and rules that it is hyperbolic, then I would argue that the codes are simply too broad, and written to favour the various industry groups, rather than the protection of the public from misleading and deceptive advertising.

## CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL

**Principle 1:** Alcohol advertising and promotions shall observe a high standard of social responsibility.

**Guideline 1(h):** Alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading.

## CODE FOR ENVIRONMENTAL CLAIMS

**Principle 1:** Advertisements making an environmental claim should be prepared with a due sense of social responsibility to consumers and to society.

**Principle 2:** Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

## RESPONSE FROM ADVERTISER, DB BREWERIES LIMITED

I refer to your letter dated 21 September 2017 concerning the above complaint in relation to a DB Export video hosted on the following domain [www.dbexportbeer.co.nz/db-beer-bottle-sand](http://www.dbexportbeer.co.nz/db-beer-bottle-sand) (**Advertisement**).

Your letter identifies Principle 1, Guideline 1(h) of the Code for Advertising and Promotion of Alcohol (**Alcohol Code**) and Principles 1 and 2 of the Code for Environmental Claims (**Environmental Claims Code**) as being the relevant sections for consideration.

For the reasons set out below, DB Breweries Limited (**DB**) denies that the Advertisement is in breach of any of the provisions cited. The Advertisement was pre-vetted as per our standard practice and the approval number is RB2699.

### **Alcohol Code Compliance**

Principle 1 requires alcohol advertising to observe a high standard of social responsibility and, in particular, Guideline 1(h) states that: “alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading.”

The Advertisement relates to DB Export Beer Bottle Sand; a glass sand substitute for regular beach sand made by crushing beer bottles. By turning empty beer bottles into a sand substitute to be used instead of regular beach sand, DB Export seeks to a) protect the sand on New Zealand’s beaches and b) increase the number of bottles that are recycled.

DB does not accept that the Advertisement is directly, or by implication or exaggerated claim, misleading or deceptive nor that it is likely to deceive or mislead the consumer.

The Advertisement was intentionally shot as a documentary-style film to bring focus to a genuine and well-documented environmental issue; the world’s sand shortage. The fact that the Advertisement begins with actual news excerpts is evidence of the newsworthy nature of this issue.

When taken in its entirety, it is clear that the “overall impression” of the Advertisement is that:

- There is a global beach sand shortage;
- Glass can be crushed into a glass sand substitute material;
- Glass sand substitute material can be used for many purposes;
- DB Export is making a glass sand substitute product; and
- As a substitute for beach sand, using DB Export Beer Bottle Sand will “reduce the dependence on beach derived sand” which will “help save New Zealand’s beaches.”

The Complainant has raised concern with the statement in the Advertisement that “amazingly, the answer to the sand shortage could be to drink beer”. The theme of the Advertisement is not that consuming a beer will save New Zealand’s beaches. Rather, this project claims only to help. By its very nature as a beach sand substitute, any use of DB Export Beer Bottle Sand will to some extent reduce the reliance on beach sand. It follows that “this project will keep the sand on our beaches” and “reduce the country’s dependence on beach derived sand”.

The Complainant also argues that because the Advertisement is not presented in a humorous way that it will mislead. We disagree. It does not automatically follow that this Advertisement is misleading without humour for two main reasons:

1. *Overall Impression is not Misleading*

The Advertisement does not need humour to save any otherwise misleading statement. There is nothing misleading about the Advertisement.

Although previous ASCB decisions about DB Export campaigns have noted their hyperbolic nature, the Brewtroleum adverts included more exaggerated claims including the slogan “Drink DB Export: Save the entire world”. Absolute statements of this nature require the use of humour to remove the risk of residual confusion.

The Advertisement does not imprint such an absolute claim. Rather, the core message within the Advertisement is that “to help protect New Zealand’s beaches, New Zealanders can now drink a beer.” Having understood this message, no person is likely to be misled into thinking that:

- drinking a single beer will directly prevent sand dredging in New Zealand; or
- drinking a single beer will directly save a beach.

The fact that this Advertisement has been in market for over six months and, prior to September, had over 200 million impressions globally without complaint supports the view that it is not reasonable to consider that people will be misled by it.

2. *DB Export Brand*

Even if the above is not accepted, following the success of its DB Export Brewtroleum campaign, the DB Export brand is now well-known in New Zealand for environmental campaigns. Humorous television commercials and a focus on environmental issues are now synonymous with the DB Export brand. Guideline 1(h) notes that obvious hyperbole is not considered to be misleading.

Although the Advertisement was presented in a documentary-style format to add weight to the sand issue, because it was launched to coincide with the screening of a hyperbolic television commercial and because it leveraged off the back of the well-known Brewtroleum campaign, people seeing the Advertisement were highly likely to (a) have seen the humorous television commercial and/or (b) understand the humorous nature of DB Export’s campaigns. The Complainant herself confesses that she saw the television commercial and “thought it was a joke”. Having seen and understood the intent of the humorous commercial it is unrealistic to then claim that when seeing the same campaign in the Advertisement that she was misled.

*Responsible Alcohol Marketing Generally*

While the ASCB has not raised Principle 2 of the Alcohol Code as being of relevance, for the sake of completeness, DB notes that the Advertisement neither depicts nor encourages irresponsible or immoderate consumption. The Advertisement essentially calls for consumers to choose DB Export instead of other beer brands, not to drink an immoderate amount of DB Export – a brand family that, in any event, includes low ABV and 0.0% alcohol options. Rather, it states that to help save New Zealand’s beaches New Zealanders can now drink a, singular, beer.

DB also notes that persons attempting to view the Advertisement on the domain [www.dbexportbeer.co.nz/db-beer-bottle-sand](http://www.dbexportbeer.co.nz/db-beer-bottle-sand) are required, through an age verification process, to certify that they are over the age of 18.

### **Environmental Claims Code Compliance**

We note that the Complainant has not raised any breach of the Environmental Claims Code. However, as the ASA has noted that the relevant section of the ASA Code of Practice appears to be both principles in the Environmental Claims Code, we address these for completeness.

The Environmental Claims Code defines an environmental claim as:

“any statement ... that indicates an environmental aspect of a ... product ... and includes references to ... recycling...”

The two Principles of the Environmental Claims Code are:

**Principle 1** – Advertisements making an environmental claim should be prepared with a due sense of social responsibility to consumers and to society.

**Principle 2** – Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

As responsible marketer, DB conducted extensive campaign research about the global beach sand shortage. This research included reviewing sources such as the AFP News Agency video entitled “World Sand Shortage” (<https://www.youtube.com/watch?v=iH-T9hXyDFE>). Nothing about the factual background to the global sand shortage is an “environmental claim” about DB Export beer.

The only “environmental claim” about DB Export beer relates the overall impact of the DB Export Beer Bottle Sand campaign in relation to the environment. The claims in the Advertisement are not absolute. They are qualified claims such as:

- "amazingly, the answer to the sand shortage could be to drink beer".
- the project “[reduces] the country’s dependence on beach derived sand”;
- DB Export is contributing to “help save New Zealand’s beaches.”

These messages were made in the Advertisement with a due sense of responsibility and are not misleading, as already set out above.

DB considers that its promotion of a positive environmental benefit complies with both the Alcohol Code and the Environmental Claims Code, and observes a high standard of social responsibility. We believe that it is important for everyone to find ways to reduce the impact their actions have on the environment. DB submits that it would be a dangerous precedent to set to interpret the Codes as a prohibition on alcohol producers promoting the sustainability measures they put in place. By way of analogy, would an alcohol advertiser be in breach of the Code if it were to promote the fact that it offers a recycling scheme for its packaging using the slogan “drink this beer, help reduce our landfill”?

Accordingly, we respectfully consider that the Advertisement complies with the Alcohol Code and the Environmental Claims Code, and we request that ASCB rule that the complaint be: **Not Upheld.**