

<b>COMPLAINT NUMBER</b>	18/048
<b>COMPLAINANT</b>	A. Humphrey and J. Ramsay
<b>ADVERTISER</b>	BEERNZ
<b>ADVERTISEMENT</b>	BEENZ, Print
<b>DATE OF MEETING</b>	27 February 2018
<b>OUTCOME</b>	Upheld in Part

## SUMMARY

The BeerNZ advertisement appeared in the 2018 Great Kiwi Beer Festival event guide. The advertisement promoted the services of BEERNZ and was headlined “Beer is cheaper than therapy” and referred to BEERNZ as “NZ’s Leading Craft Beer Psychologists”.

The Complainants said it was irresponsible and misleading to refer to beer as a substitute for appropriate psychological counselling and treatment in a guide for an alcohol-related event.

The Advertiser said it did not authorise, pay for or publish the advertisement in the 2018 guide. The advertisement had been published in the 2017 guide and the event organisers confirmed it had placed the advertisement in the 2018 guide without the knowledge of the Advertiser.

The Advertiser said the advertisement used obvious hyperbole in a targeted publication to promote its role as a craft beer distributor.

The Complaints Board said Guideline 1(d) of the Code for Advertising and Promotion of Alcohol was clear that alcohol advertisements should not suggest alcohol offers any therapeutic benefits. It said the statement in the advertisement that “Beer is cheaper than therapy” and the reference to “psychologists” was in breach of Guideline 1(d) of the Code for Advertising and Promotion of Alcohol and the intended humour of advertisement did not save it.

The Complaints Board ruled the advertisement had breached Guideline 1(d) of the Code for Advertising and Promotion of Alcohol and had not been prepared or placed with a high standard of social responsibility in breach of Principle 1.

The Complaints Board said the advertisement had not met the threshold to cause serious or widespread offence under Guideline 1(g) nor was it likely to mislead consumers, under Guideline 1(h) and it was not in breach of these guidelines.

The Complaints Board ruled the complaints were Upheld, in part.

### **[Advertisement removed]**

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

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## COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principle 1 and Guidelines 1(d), 1(g) and 1(h) of the Code for Advertising and Promotion of Alcohol. Principle 1 required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility. Guideline 1(d) said alcohol promotions shall not suggest it offers any therapeutic benefit. Guideline 1(g) requires that alcohol advertising not cause serious or widespread offence and Guideline 1(h) requires alcohol advertisements not mislead the consumer.

**The Complaints Board ruled the complaints were Upheld, in part.**

### The Complaints

Two Complainants, A. Humphrey and J. Ramsay, expressed concern at the advertisement promoting beer as “cheaper than therapy” and the reference in the advertisement to “psychologists”. A. Humphrey considered the advertisement to be misleading and likely to cause offence, particularly to “someone struggling with an alcohol related mental disorder.”

### The Advertiser’s Response

The Advertiser said it did not “authorise, pay for or publish the advertisement complained about.” It was not consulted prior to its publication and was only made aware of it when a copy of the event guide was supplied to it. The Advertiser said BEERNZ Limited is a private company and the advertisement was not an industry statement.

The Advertiser said the audience were “clearly beer enthusiasts and there was an appropriate mix of food, educational seminars and presentations, together with live entertainment” at the event. The Advertiser said in this context, the advertisement was clearly using hyperbole and was unlikely to offend or mislead the audience.

### The Media’s Response

The event guide was published by Team Event Limited. The company confirmed it used the BEERNZ 2017 advertisement to fill space in the 2018 guide without consulting the Advertiser. The company confirmed it was a one-off publication for that event and it would not publish the advertisement again.

### The Complaints Board Discussion

The Complaints Board began by discussing the Code for Advertising and Promotion of Alcohol, in particular Guideline 1(d), which states that alcohol advertising and promotions should not suggest alcohol offers any therapeutic benefit. The Board also took into account the Code for the Advertising and Promotion of Alcohol requires a high standard of social responsibility.

The Complaints Board agreed the claim in the advertisement that “Beer is cheaper than therapy” and the reference to “psychologists” did imply a therapeutic benefit. The Complaints Board said that although the intended humour of the advertisement was likely to be obvious to consumers attending the beer festival, the restriction on making therapeutic claims about alcohol in the Code did not allow for the use of humour.

The Complaints Board ruled the advertisement had breached Guideline 1(d) of the Code for Advertising and Promotion of Alcohol and had not been prepared or placed with a high standard of social responsibility in breach of Principle 1.

The Complaints Board then turned to discuss whether the advertisement was likely to cause serious or widespread offence. The Complaints Board agreed that while matters relating to mental health and addiction were serious, in the context of an event guide for a beer festival, the advertisement did not reach the threshold to cause serious or widespread offence.

The Complaints Board noted Complainant A. Humphrey's concerns that beer was in any way a substitute for appropriate psychological treatment was misleading and not saved by hyperbole. The Complaints Board considered the targeted audience for the beer distributor advertisement in the beer festival guide were unlikely to be misled by it.

The Complaints Board said the advertisement had not met the threshold to cause serious or widespread offence under Guideline 1(g) nor was it likely to mislead consumers, under Guideline 1(h) and it was not in breach of these guidelines.

In summary, the Complaints Board ruled the complaints were Upheld under Guideline 1(d) and Principle 1 of the Code for Advertising and Promotion of Alcohol and Not Upheld under Guidelines 1(g) and 1(h).

## **DESCRIPTION OF ADVERTISEMENT**

The Event Guide for the Christchurch Beer Festival included information about the event programme and advertising. An advertisement for BEERNZ confirmed that online sales were available during business hours and they offer nationwide delivery. The heading in the advertisement said "Beer is cheaper than therapy" and it included the BEERNZ logo, with the line "NZ's Leading Craft Beer Distributor". The word "Distributor" was crossed out in red and the word "Psychologists" written underneath.

## **COMPLAINT FROM A HUMPHREY**

In New Zealand every year, one in five of us experiences some form of psychological distress or develops a diagnosable mental disorder. These numbers are increasing and will continue to do so.

A tragic outcome for some people suffering from psychological distress is suicide. UNICEF's latest Innocenti Report Card<sup>1</sup> identifies New Zealand as suffering from the highest rate of teenage suicide in the world. The reasons for this are complex, and include associations with family violence, child abuse and poverty. All these associations in themselves are related to alcohol consumption. Alcohol consumption has been reported in the Australian and New Zealand Journal of psychiatry as an independent risk factor for teenage suicide attempts<sup>2</sup>.

In his 28 July 2017 report Rethinking New Zealand's Approach to Mental Health and Mental Disorder: a whole-of-government, whole-of-nation long-term commitment<sup>3</sup>, the Prime Minister's Chief Scientific Adviser, Sir Peter Gluckman said:

"There is a pressing need for us to reorder our thinking about alcohol use – because excessive and inappropriate use are both symptoms of and causes of mental disorder. We need to re-evaluate all aspects of how these are viewed and handled in our society including availability, social acceptability, behaviour, social licence, and price: all are central to any rethink/revitalisation of mental-health policy."

Beer NZ (The Brewer's Guild of New Zealand) has produced an advertisement stating that "Beer is cheaper than therapy" in which it describes itself as NZ's leading Craft Beer Psychologists.

This breaches the Advertising Standards Authority's code of ethics in a number of areas:

2. Truthful presentation. The implication that beer is any way a substitute for appropriate psychological counselling and treatment is a false and misleading representation which cannot be described as an obvious hyperbole.

4 and/or 5 – Decency and/or Offensiveness. Given the close association between alcohol and mental health disorders, including suicide, the suggestion that alcohol consumption is in some way a therapy in itself could be extremely offensive to someone struggling with an alcohol related mental health disorder. Given the strong association between acute and chronic alcohol use and suicide<sup>4</sup> many families of suicide victims are likely to be strongly offended by the suggestion that alcohol is in some way a psychological therapy, when they will know, from painful personal experience, that it is exactly the opposite.

1 [https://www.unicef-irc.org/publications/pdf/RC14\\_eng.pdf](https://www.unicef-irc.org/publications/pdf/RC14_eng.pdf)

2 Fleming TM et al. Self-reported Suicide Attempts and Associated Risk and Protective Factors Among Secondary School Students in New Zealand. Australian & New Zealand Journal of Psychiatry; 2007 41 (3); 213-221 <http://journals.sagepub.com/doi/abs/10.1080/00048670601050481>

3 <http://www.pmcsa.org.nz/wp-content/uploads/17-08-14-Mental-health-short.pdf>

4 Cherpitel, C. J., Borges, G. L.G. and Wilcox, H. C. (2004), Acute Alcohol Use and Suicidal Behavior: A Review of the Literature. Alcoholism: Clinical and Experimental Research, 28: 18S–28S. doi: 10.1097/01.ALC.0000127411.61634.14

## COMPLAINT FROM J RAMSAY

I would like to make a complaint about an advert:

Advertised in the Event Guide for the Christchurch Beer Festival (event date was 27/1/18)

I believe it promotes alcohol as a therapy. It is advertised in a guide for an alcohol related event. Advert attached

I am making this complaint in my role as a licensing inspector in relation to the impact this advert may have on alcohol related harm, not on behalf of the council.

## CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL

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

**Guideline 1 (d):** Alcohol advertising and promotions shall not depict alcohol as a necessity, nor required for relaxation nor suggest it offers any therapeutic benefit.

**Guideline 1 (g):** Alcohol advertising and promotions shall not cause widespread or serious offence, taking into account prevailing community standards, context, audience, medium and product.

**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.

**RESPONSE FROM ADVERTISER – BEER NZ**

We have completed the Advertising Complaint Response Form from your website and it is attached. However, we provide additional information and it is contained within this letter.

- (1) BEERNZ Limited did not authorise, pay for, or publish the advertisement complained about. It was not consulted about it prior to publication and did not discover its existence until being supplied a copy of the “Event Guide” on 27 January 2018, at which point it had no ability to do anything about it.
- (2) The Event Guide was published by Team Event, PO Box 22-124 Christchurch, not BEERNZ.

Notwithstanding the above, and in support of the publishers, we make the following additional comments:

- (3) The complaint of A Humphrey is factually inaccurate in that it makes a deliberate link between BEERNZ and The Brewer’s Guild of New Zealand, which is not the case. They are two separate legal entities and have no commonality other than being part of the same industry. The Brewer’s Guild is an Incorporated Society (Industry Association) while BEERNZ Limited is a private limited company.
- (4) The Brewer’s Guild is not mentioned in the advertisement and so the link made by A Humphrey is clearly deliberate to suggest that this advertisement is in some way an Industry statement requiring more sanction. That is not the case.
- (5) The complaint from the Alcohol Licensing Inspector appears to be supportive of A Humphrey’s complaint, although it is non-specific and relates to some generic impact that the advertisement “may have on alcohol related harm”. This statement is unquantified and speculative making it impossible to respond to. The Alcohol Licensing Inspector specifically quotes their role in making the complaint as the Licensing Inspector but distances themselves from the Council (District Licensing Authority). We submit that their complaint should be dismissed for lack of substance.
- (6) A Humphrey’s complaint has two tranches; Truthfulness and Offensiveness.
  - (i) Truthfulness. We submit that the advertisement complies with Rule 2 as it is clearly obvious hyperbole and not designed to mislead anyone. There is no such thing as a Craft Beer Psychologist and we seriously doubt that anyone would believe that there was. It does not pretend to be anything other than what it is, clearly tongue-in-cheek hyperbole designed solely as humour.
  - (ii) Offensiveness. The advertisement was not intended nor do we believe that it is, offensive given the context, medium (An Event Guide) and audience. This was a one-off event publication given to paying attendees upon entry to a restricted event. There were some 11,000 attendees at this annual event. Legal age restrictions had to be verified to effect entry and the event had its own Security and an on-site Police presence. Special Licences had to be applied for (to the District Licensing Authority) by each of the 34 beer outlets and all Licensing requirements were strictly enforced by individual Duty Managers for each outlet.

The context of the publication within which the complained advertisement featured, has an introductory statement by the organiser on Page 2, which in part reads: *“As we all know, you cannot live by beer alone, so we have also gathered some of Christchurch’s finest food*

*producers. Whether you're looking for a spicy curry to match with an IPA, a burger to pair with your Pilsner or some seafood to go with an Amber Ale, you won't have to look far to find a perfect food match. Stroll through the festival and explore the many areas here for your enjoyment, .spend time at your favourite brewery and chat to the Brewmaster; grab a seat in the Pomeroy's Craft Beer Academy or the SOBA Brewers' Table for one of the free seminars from a selection of New Zealand's most knowledgeable hop-heads or wander over to The Cooking Theatre to see some of New Zealand's top chefs in action and maybe even catch some tips! ... Enjoy the festival, drink responsibly and indulge in the world's tastiest beers. Cheers."*

Those attending the event (the target audience) were clearly beer enthusiasts and there was the appropriate mix of food, educational seminars and presentations, together with live entertainment. We received no complaints on the day directly or subsequently from the organisers, on-site Security or the NZ Police suggesting that anyone took offence to advertising in the Event Guide.

We do not believe that the advertisement was likely to cause serious or widespread offence taking into account the context, medium and audience.

As stated above the 27 January 2018 advertisement complained about was not authorised, paid for, or published by us. It was re-issued by the event organiser unbeknown to us from a previous advertisement placed during last year's event in 2017 (not the subject of this complaint). The material content was not original to BEERNZ but taken from old advertising signage circa 1960 -1970. We used it once in 2017 but had no intention of re-publishing it again. Nor did we.

We believe that we have complied with the ASA Code of Ethics and Rules and have not contravened section 237 Sale & Supply of Alcohol Act 2012.

We trust that the ASCB will exercise its discretion with a common-sense outcome, having regard for the overall impression conveyed, the one-off context, and the target audience.

#### **FURTHER RESPONSE FROM ADVERTISER – BEER NZ**

We respond to your email of 21 February drawing our attention to the Code for Promotion of Advertising Alcohol and clarifying that you wish our response to be specific in terms of Principle 1, Guidelines 1 (d), 1 (g) and 1 (h).

While our initial response was mindful of the above, for the sake of clarity, we reiterate or expand on our response as follows:

The most important fact is that the advertisement complained about was not placed by us. It was published gratuitously without our knowledge by the Event Guide publisher based on a previous year's placement. However, the previous year's placement is not the subject of this complaint; it is the 2018 Event Guide publication that is complained about.

Again, notwithstanding the above, in relation to the specific Guidelines, we say this:

Guideline 1 (d).

The intention of the advertisement is not to suggest that Beer has some therapeutic benefit, but to draw attention to the Distributor (us) by way of exaggerated statement for effect. Hyperbole. It is not advertising a specific product, it is advertising us as a Craft Beer Distributor.

**Guideline 1 (g)**

We submit that the advertisement did not cause “widespread or serious offence taking into account context, audience & medium”.

There were over 11,000 attendees at the event and no complaints were made on the day or subsequently to either us, the promoters, the Police or the District Licensing Authority. Two complaints have been received subsequently from two people, one of whom was at the event in the capacity of a Licensing Inspector, not a paid attendee.

It is interesting to note that both complainants are likely in regular contact with each other due to the nature of their employment. Given the above and that both complaints seem to have been received by the ASA on the same day, it suggests there was some collusion, thus there really is only one joint complaint?

Further, whether there are technically one or two complaints, one or two out of 11,000 plus is hardly widespread.

This publication was handed to each of the 11,000 plus attendees upon paid entry to the event. It was not widely circulated or intended other than as a programme guide to assist people to find specific outlets, events and presentations. The advertisements were secondary, to acknowledge the support of major contributors.

**Guideline 1 (h)**

We submit that the advertisement is not misleading. It is simple hyperbole which is exempt under the Guideline.

**RESPONSE FROM MEDIA – TEAM EVENT**

Team Event Limited (the **Company**) is a New Zealand events company. The Company operates a number of events throughout the year. One such event is the “Great Kiwi Beer Festival” held in January this year (the **Event**).

The Company does not produce and/or distribute its own beer at the Event, but rather, invites craft beer producers from around the country as well as larger national and multinational beer providers, to operate stalls, run showcases and create other beer based attractions for the attendees of the Event.

Naturally, the event attracts those working in the liquor industry who may be looking to market their products and services to beer producers and consumers. BEERNZ is one such independent third party who has recognised that the Event provides an opportunity to reach a targeted demographic.

In 2017 the Company was approached by BEERNZ regarding advertising in the Event’s event guide. Advertising space was offered and the advertisement featured in the event guide in 2017. In 2018 the Company ran the advertisement without the knowledge of BEERNZ, as there was distressed inventory available immediately prior to going to print.

In addition to companies looking to market liquor related products and services to our customers, other companies have noticed that the Event provides a useful advertising opportunity. Lands & Survey are one such company, that, much like BEERNZ, wanted to reach the public and asked the Company to run an advertisement in the Event’s event guide. Again, this advertisement featured in the 2017 event guide, and was featured in the 2018 guide.

Whilst the Company does not have any input into the creation of advertisements by independent third parties wishing to advertise, nor does the Company accept liability for the advertisements that BEERNZ and Lands & Survey decided to run, the Company does acknowledge that to some members of the public this type of humour may be ill-considered. Furthermore, the Company takes the complaints made by J Ramsay, and A Humphrey very seriously and acknowledges that the Company should have more rigorously reviewed the advertisements that were run in the event guides.

The Company believes strongly in sending the right message to its consumers and will therefore not be allowing these advertisements to ever run again. Please note the event guide is a one-off publication and there will be no further publication of that year's guide ever again.

The Company will also be speaking with BEERNZ and advising them that should they wish to advertise in the event guide in 2019, they must give proper consideration to the Advertising Code of Ethics.

With respect to BEERNZ we will be advising them that they must properly review the Code for Advertising and Promotion of Alcohol - Guideline 1 (d), Guideline 1 (g), Guideline 1 (h), Principle 1

We hope that the proposed action is sufficient to ensure that this matter can be settled. If ASA would like to speak directly with the companies that created the advertisements, we would be happy to put the ASA in touch with them.

**APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.