

<b>COMPLAINT NUMBER</b>	18/213
<b>COMPLAINANT</b>	M Moore & L Donald
<b>ADVERTISER</b>	Teddy's Bar
<b>ADVERTISEMENT</b>	Teddy's Bar, Out of Home and Digital Marketing
<b>DATE OF MEETING</b>	7 August 2018
<b>OUTCOME</b>	Upheld, in part, Not Upheld, in part

## **SUMMARY**

A line drawing of a woman sitting with a glass of wine and smoking a cigarette was used in Facebook, website and sandwich board advertisements for Teddy's Bar. The sandwich board advertisement was located outside Teddy's Bar and was visible from the footpath.

The first Complainant, M Moore, said they weren't sure if it was now permissible to include a cigarette in an advertisement. The second Complainant, L Donald, said they disagree with the image of a woman smoking as it is "harmful and stupid", and they thought it might be illegal too. They were also concerned about this outdated message being viewed by children.

The Advertiser rejected the complaint saying while they understand that people might take offence to such an image, they are advertising their restaurant, not selling cigarettes.

A majority of the Complaints Board said the sandwich board advertisement had not been placed with a due sense of social responsibility to consumers and to society. This was largely because of the location of the advertisement, which could be seen by passersby, including children. The majority agreed the image in the advertisement promoted smoking with drinking alcohol.

A minority disagreed and said the sandwich board advertisement did not reach the threshold to breach the Code of Ethics. This was because, in the view of the minority, the depiction of someone with a cigarette, in itself, is not socially irresponsible. The minority said, in the context of a bar in Ponsonby Rd, where people smoke and drink outside, this image was not inappropriate.

The Complaints Board agreed unanimously that the Facebook and website advertisements were prepared with a due sense of social responsibility to consumers and to society and were not in breach of the Code of Ethics. This was due to the placement of the advertisements, which could only be seen by those who chose to visit the Facebook page or website for Teddy's Bar.

In accordance with the majority, the Complaints Board ruled to Uphold the complaint, in part and Not Uphold the complaint, in part.

**[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 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, taking into account the context, medium, audience and product.

**The Complaints Board ruled the complaint was Upheld in part and Not Upheld, in part.**

### **The Complaint**

The first Complainant, M Moore, said they weren't sure if it was now permissible to include a cigarette in an advertisement. They noted the presence of a cigarette on some of the pages in their website and on a display facing the street frontage outside the restaurant.

The second Complainant, L Donald, said they disagree with the image of a woman smoking as it is "harmful and stupid", and they thought it might be illegal too. They were also concerned about this outdated message being viewed by children.

### **The Advertiser's Response**

The Advertiser rejected the complaint saying while they understand that people might take offence to such an image, they are advertising their restaurant, not selling cigarettes.

### **Precedents**

To assist in coming to its decision the Complaints Board reviewed two precedent decisions: Complaint 09/397, which was "Settled" and Complaint 10/679 which was Not Upheld.

The first precedent decision concerned a newspaper advertisement for Grabaseat, which included the words "Smokin' Hot Deals Thousands of Cheap Flights around NZ and to Oz's Big Smoke..." Below the text was a picture of a topless, overweight bald man smoking a cigar.

In his decision, the Chairman of the Complaints Board noted the Advertiser's comments about the excellent work carried out by the Wellington Smokefree Network in minimising tobacco related harm, and their decision not to use this image in future advertising.

The second precedent decision, Complaint 10/679, was a billboard advertisement for Okuma Fishing which showed a tattooed baby with a beard, smoking a pipe. In prominent letters to the left of the image were the words "Born to Fish".

In its decision the Complaints Board said it did not believe the advertisement would encourage pipe smoking and most people would recognise the image as marketing hyperbole.

### **The Complaints Board Discussion**

Having considered all the information provided, the Complaints Board discussed whether the advertisements before it had breached Basic Principle 4 of the Code of Ethics.

The Complaints Board decided to consider the sandwich board advertisement separately from the Facebook and website advertisements. This was because the sandwich board advertisement could be viewed by anyone passing on the street, whereas the Facebook and

website advertisements could only be seen by someone choosing to visit the relevant online sites.

**Was the sandwich board advertisement prepared with a due sense of social responsibility to consumers and to society?**

The Complaints Board agreed that while the image of the woman smoking was a contemporary image, the use of such an image in an advertisement was dated.

The Complaints Board referred to the Smoke-free Environments Act 1990, which places limits on the marketing, advertising and promotion of tobacco products. The Complaints Board said that while its role was not to enforce this legislation, it acknowledged the Government's goal for New Zealand to be smoke-free by 2025.

A majority of the Complaints Board agreed the advertisement had not been prepared with a due sense of social responsibility to consumers and to society. This was largely because of the location of the advertisement, which could be seen by passersby, including children. A majority of the Complaints Board said the image of a woman smoking was not appropriate in this location. The majority agreed the image in the advertisement promoted smoking with drinking alcohol which was not socially responsible.

A minority disagreed and said the advertisement did not reach the threshold to breach the Code of Ethics. This was because, in the view of the minority, the depiction of someone with a cigarette, in itself, is not socially irresponsible. The minority said, in the context of a bar in Ponsonby Rd, where people smoke and drink outside, this image was not inappropriate.

In accordance with the majority the Complaint Board ruled the advertisement had not been prepared with a due sense of social responsibility to consumers and this part of the complaint was upheld.

**Were the website and the Facebook page advertisements prepared with a due sense of social responsibility to consumers and to society?**

The Complaints Board then discussed whether the website and Facebook page advertisements containing the image of a woman smoking had been prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board said that while the image of a woman smoking did link drinking with smoking, the advertisements did not reach the threshold required to breach the Code of Ethics and were therefore prepared with a due sense of social responsibility to consumers and to society. This was due to the placement of the advertisements, which could only be seen by those who chose to visit the Facebook page or website for Teddy's Bar. The website showed that the bar had an outdoor smoking area.

Accordingly, the Complaints Board ruled the complaint was Upheld in part and Not Upheld, in part.

**DESCRIPTION OF ADVERTISEMENT**

A line drawing of a woman sitting with a glass of wine, smoking a cigarette was used in three locations: on Teddy's Bar website and Facebook page and on a sandwich board advertisement outside the premises. Teddy's Bar is located on the main road going through Ponsonby, Auckland.

**COMPLAINT FROM M MOORE**

Please note the cigarette. I'm unsure if this sort of promotion is now permissible. Interestingly, the frontpage of their website doesn't have the cigarette photo, the booking page and others, does have a cigarette-in-hand photo the photo was taken while walking on the Ponsonby Road footpath.

**COMPLAINT FROM L DONALD**

Hi this image was used to promote Teddys Bar on Facebook so u followed the link and also found it on their website.

I disagree with the image of a woman smoking as it harmful and stupid and I thought illegal also?

I smoked for 22 years and know the struggle of quitting, I used to view smoking as glamorous and carefree, I know now how wrong and ignorant that was.

I have children and I don't want this type of message shown to them, it is so outdated!

**CODE OF PRACTICE****CODE OF ETHICS**

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

**RESPONSE FROM ADVERTISER, TEDDY'S BAR**

In response to the complaints, we don't feel like we've done anything wrong. We're advertising a restaurant, not tobacco products, we don't sell cigarettes, never will. Neither smoking, or drinking is illegal. While I understand that people might take offence to such an image, I don't believe that we are advertising smoking or tobacco products, the sandwich board is an advertisement for a restaurant.

**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.