

COMPLAINT NUMBER	18/327
COMPLAINANT	P Snowden, on behalf of the Problem Gambling Foundation
ADVERTISER	Lotto New Zealand
ADVERTISEMENT	Instant Kiwi, Digital Marketing, Instore
DATE OF MEETING	30 October 2018
OUTCOME	Not Upheld

SUMMARY

The website advertisement on www.mylotto.co.nz for a set of special release Instant Kiwi tickets promoting 40 years of New Zealand film featured images of four Instant Kiwi tickets. Each ticket had details about one of four New Zealand films. The films were: Hunt for the Wilderpeople, Footrot Flats: The Dog's Tale, Whale Rider and The World's Fastest Indian.

The Complainant, the Problem Gambling Foundation of New Zealand, said the advertisements (the Instant Kiwi ticket and the website page) showed a clear disregard for social responsibility because the imagery featured popular New Zealand movies that have strong appeal to minors and the Instant Kiwi tickets are on display where they can be clearly seen by young people.

The Advertiser, Lotto New Zealand, said the digital marketing which is the subject of the complaint is not an advertisement but information about the Instant Kiwi game. It is not intended to promote the game or influence consumer choice or behaviour and the design, advertising and marketing is intended to appeal to those 18 and over.

The Complaints Board agreed the Instant Kiwi ticket itself is not an advertisement but said the Instant Kiwi website is.

The Complaints Board agreed that while the advertisement had some appeal to minors, it was not strong or evident appeal, taking into account the placement of the advertisement on the website and the fact the majority of the films featured in the advertisement are more likely to appeal to adults.

The Complaints Board ruled the advertisement was not in breach of Principle 2 and Guideline 2(a) of the Code for Advertising Gaming and Gambling.

Accordingly, 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 complaint with reference to Principle 2 and Guideline 2(a) of the Code for Advertising Gaming and Gambling.

Principle 2 required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility.

Guideline 2(a) required the Complaints Board to consider whether the advertisement was directed at minors, had strong or evident appeal to minors, or portrayed minors participating in activities in which they are under the legal age. Minors may appear in situations in which they would be naturally found (e.g. a family meal), provided there is no direct or implied suggestion that they will participate in the gaming.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant, the Problem Gambling Foundation of New Zealand, said the advertisements (the Instant Kiwi ticket and the website) showed a clear disregard for social responsibility because the imagery featured popular New Zealand movies that have strong appeal to minors and the tickets are on display where they can be clearly seen by young people.

The Advertiser's response

The Advertiser, Lotto New Zealand, said the digital marketing which is the subject of the complaint is not an advertisement but information about the games, including odds and results. It is not intended to promote the game or influence consumer choice or behaviour.

The Advertiser said the design, advertising and marketing for instant Kiwi games is intended to appeal to those 18 and over.

Complaints Board Discussion

Jurisdiction

The Complaints Board considered whether the items before it were advertising, and referred to a precedent Decision on scratch cards, Decision 15/257.

This Decision said in part:

“[The Chair] then referred to previous Chairman’s Ruling 12/054 that dealt with a similar complaint about another scratch card. In that Ruling, the Chairman ruled the item was not an advertisement but was a scratch card game to which the Advertising Codes of Practice did not apply.

The Complaints Board said the Instant Kiwi ticket was a game and not an advertisement and therefore they were not required to adjudicate on the ticket itself.

The Complaints Board then considered the website page on www.mylotto.co.nz.

The Complaints Board noted the definition of “advertisement” for the purposes of the Codes of Practice states:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and

communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

The Complaints Board noted the Advertiser's view that the website provided information about the game that was required by legislation. In the Board's view the website page went further than providing information on the games and prizes and confirmed the website page promoting the Instant Kiwi ticket was an advertisement, and it proceeded to adjudicate the complaint on that basis.

Consumer Takeout

The Complaints Board considered the consumer takeout of the website advertisement. It said the website advertisement is providing information and promoting the sale of Instant Kiwi tickets.

Is the advertisement directed at minors, does it have strong or evident appeal to minors, or does it portray minors participating in activities in which they are under the legal age?

The Complaints Board noted the advertisement features well-known and popular New Zealand films: Footrot Flats: The Dog's Tale, Whale Rider, The World's Fastest Indian and Hunt for the Wilderpeople.

The Complaints Board said that while the first three films are less contemporary and more likely to appeal predominantly to those over the age of 18, Hunt for the Wilderpeople does have some appeal to minors (i.e. those under the age of 18). The young actor Julian Dennison, who is one of the main characters in the film, currently enjoys significant popularity with young people.

The Complaints Board noted that while the Instant Kiwi website is not gate-controlled, that is, it does not restrict access on the basis of age, the sale of Instant Kiwi tickets is restricted to those over the age of 18. To register for participation in the purchase of Instant Kiwi tickets via the website an applicant must provide their date of birth.

The Complaints Board said the website advertisement was unlikely to be seen by a significant number of minors, and noted the information provided by the Advertiser, Lotto New Zealand, that data obtained through Google Analytics shows that 94.5% of visitors to the information page on MyLotto are 25 years or over.

The Complaints Board agreed that while the advertisement had some appeal to minors, it did not have strong or evident appeal to minors, taking into account the placement of the advertisement and the fact the majority of the films featured in the advertisement are more likely to appeal to adults.

The Complaints Board agreed the advertisement was not directed at minors and did not portray minors participating in activities in which they are under the legal age.

Does the advertisement observe a high standard of social responsibility?

The Complaints Board agreed that, taking into account the points mentioned above, the advertisement did observe a high standard of social responsibility.

The Complaints Board ruled the advertisement was not in breach of Principle 2 and Guideline 2(a) of the Code for Advertising Gaming and Gambling.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The website advertisement for a set of special release Instant Kiwi tickets promoting 40 years of New Zealand film featured images of four Instant Kiwi scratchy tickets. Each ticket had details about one of four New Zealand films. The films were: Hunt for the Wilderpeople, Footrot Flats: The Dog's Tale, Whale Rider and The World's Fastest Indian.

COMPLAINT FROM P SNOWDEN, PROBLEM GAMBLING FOUNDATION OF NEW ZEALAND

Re: NZ Lotteries special release Instant Kiwi tickets

I am writing to make a complaint under the *Code for Advertising Gaming and Gambling, Principle 2: Advertisements should observe a high standard of social responsibility.*

The product being advertised is a set of special release Instant Kiwi tickets to promote 40 years of New Zealand film. A copy of this advertisement is at the end of this letter.

This is digital marketing on the MyLotto website <https://mylotto.co.nz/instant-kiwi> and the physical Instant Kiwi tickets are promoted and sold at Lotto retailers around the country to people aged over 18 years.

Under Principle 2, Guideline 2 (a) it clearly states that 'advertisements should not be directed at minors, have strong or evident appeal to minors nor portray minors participating in activities in which they are under the legal age'.

These products are on display for sale where they can be clearly seen by young people using images that appeal to young people. We accept that these Instant Kiwi tickets do not portray minors actually participating in underage gambling; the imagery used does however, have strong appeal to minors as they feature popular New Zealand movies that were seen by many young people, including those under the legal age for purchasing these gambling products.

Three of the movies featured (*Hunt for the Wilderpeople*, *The World's Fastest Indian*, and *Whale Rider*) are rated PG13 and the other movie, *Footrot Flats: The Dog's Tale* is rated PG.

It is of concern that an age restricted gambling product features imagery from movies and young movie actors that will directly appeal to a young audience. We consider this is in breach of the Code for Advertising Gaming and Gambling, Principle 2 as it shows a clear disregard for social responsibility by Lotteries NZ.

The association between minors and these product images is compelling. Further it is our view that the use of young people to sell age restricted products contravenes the harm minimisation purposes of the Gambling Act 2003.

CODES OF PRACTICE

CODE FOR ADVERTISING GAMING AND GAMBLING

Principle 2: Advertisements should observe a high standard of social responsibility.

Guideline 2(a): Advertisements should not be directed at minors, have strong or evident appeal to minors, nor portray minors participating in activities in which they are under the legal age. Minors may appear in situations in which they would be naturally found (e.g. a family meal), provided there is no direct or implied suggestion that they will participate in the gaming.

RESPONSE FROM ADVERTISER, LOTTO NEW ZEALAND

RE: Lotto NZ Digital Marketing – Complaint 18/327

Thank you for the opportunity to respond to the complaint to the Advertising Standards Authority (ASA) with regards to material relating to Lotto NZ's '40 Years of Kiwi Film' Instant Kiwi ticket.

Following the complaint referred to in your letter, you have requested comments from The New Zealand Lotteries Commission (Lotto NZ) in regards to:

- Principle 2 of the Code for Advertising Gaming and Gambling, Guideline (a)

Lotto NZ believes that our advertising for the Instant Kiwi '40 Years of Kiwi Film' ticket complies with the Code for Advertising Gaming and Gambling. Please find our detailed response outlined below.

Public information provided by Lotto NZ on mylotto.co.nz

Lotto NZ creates around 40 different Instant Kiwi tickets per year, which are age restricted to players aged 18 and over. When designing these games, we have clear internal guidelines in place that are intended to ensure that the design, advertising and marketing of all Instant Kiwi games appeal to adults and those over 18. Instant Kiwi games are not intended to have strong or evident appeal to minors. It is important to Lotto NZ that we comply with all applicable laws and codes, including the Gambling Act 2003 and the ASA Code for Advertising Gaming and Gambling.

The complaint that has been made refers to "digital marketing" on Lotto NZ's website, MyLotto (<https://mylotto.co.nz/instant-kiwi>). The example of "digital marketing" that has been provided with the complaint is not, in Lotto NZ's view, an advertisement, but rather is intended to provide consumers with important information about Instant Kiwi's games, including odds and results.

The publication of the results of Instant Kiwi games is required by law. Under Section 14 of Instant Kiwi Game Rules 1992, Lotto NZ has a legal obligation to publish the results of all Instant Kiwi tickets to ensure that players are aware of how many top prizes remain available to be won. One of the primary ways Lotto NZ ensures this obligation is met is by publishing the results of all active and closed Instant Kiwi games online at [MyLotto.co.nz/instant-kiwi](https://mylotto.co.nz/instant-kiwi).

The Instant Kiwi information published on this page of MyLotto, as appended (in part) to the complaint, is not intended to promote the game or influence consumer choice or behaviour. Instead, it serves a dual functional purpose, namely:

- (a) ensuring players have easy access to the results of Instant Kiwi games; and
- (b) supporting our commitment to responsible play by providing a central point through which players can access the odds of winning and prize pools for individual Instant Kiwi games.

As this page serves a functional purpose, the only imagery relating to the ticket featured on the page is an image of the ticket itself. There is no call-to-action for consumers to purchase or play the '40 Years of Kiwi Film' Instant Kiwi game. As with all Instant Kiwi games, an image of the ticket is used to ensure customers can easily identify the game they would like to receive more information about, without being required to know the formal name of the individual ticket.

Data obtained through Google Analytics shows that the 94.5% of visitors to this information page on MyLotto are 25 years or over, supporting Lotto NZ's belief that this page serves a functional purpose by providing information to those legally able to purchase and play Instant Kiwi's games. All information published on MyLotto about the results, odds and other factual information relating to Instant Kiwi games is not targeted towards minors, and would be rarely viewed by minors.

As a result of Lotto NZ's legal obligation to publish the results of all Instant Kiwi games and the functional purpose the information cited in the complaint serves, we do not believe that this page can be considered advertising as per the Advertising Standard Authority's definition:

- "Advertising and Advertisement(s)" means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed'

In summary, the posting of results, odds and other factual information about Instant Kiwi games on Mylotto is not intended to influence the choice, opinion or behaviour of those who view this information, but rather serves a purely functional purpose. Accordingly, Lotto NZ considers that the example cited by the complainant regarding the '40 Years of Kiwi Film' Instant Kiwi ticket is not advertising and, as such, does not fall within the jurisdiction of the Advertising Standards Authority.

However even if the posting of this information on the Lotto NZ website were to be considered to be advertising:

- (a) the posting of results is required by law, and by association required in order to comply with Principle 1 of the Code for Advertising Gaming and Gambling; and
- (b) all material associated with the Instant Kiwi '40 Years of Kiwi Film' ticket complies with the Code for Advertising Gaming and Gambling.

Our specific response is provided below.

Material relating to '40 Years of Kiwi Film' Instant Kiwi ticket does not breach Code

Code for Advertising Gaming and Gambling, Principle 2 – Advertisements should observe a high standard of social responsibility.

Guideline (a): Advertisements should not be directed at minors, have strong or evident appeal to minors, nor portray minors participating in activities in which they are under the legal age. Minors may appear in situations in which they would be naturally found (e.g. a family meal), provided there is no direct or implied suggestion that they will participate in the gaming.

Lotto NZ considers that even if the information page on the MyLotto website was found to be an advertisement, any material relating to the Instant Kiwi '40 Years of Kiwi Film' ticket does

not breach the Code for Advertising Gaming and Gambling. Like all Lotto NZ's Instant Kiwi games, this ticket observes a high standard of social responsibility and in particular:

- (a) is not "directed at minors"; and
- (b) does not have "strong or evident appeal to minors".

Instant Kiwi is an age-restricted product. Lotto NZ is very careful when developing Instant Kiwi ticket themes not to create tickets with a strong appeal to minors. Lotto NZ has been major funder of the New Zealand Film Commission (NZFC) over the past 31 years, providing approximately \$14 million in funding to the NZFC every year. This funding helps bring Kiwi stories to life through film and support the development of a strong, sustainable local film industry. The '40 Years of Kiwi Film' Instant Kiwi tickets that are the subject of the complaint were designed to recognise this relationship between NZFC and Lotto NZ, and to celebrate 40 years of Kiwi film.

Before choosing to launch the '40 Years of Kiwi Film' Instant Kiwi game, Lotto NZ, in conjunction with the NZFC, carefully considered which films to feature, in order to ensure that a high standard of social responsibility was observed. The films chosen to feature on these tickets are: *Footrot Flats: The Dog's Tale*, *The World's Fastest Indian*, *Whale Rider* and *Hunt for the Wilderpeople*.

As noted in the complaint, each of these films has a rating of PG or PG13, which advises the public that the films do not contain content that could be considered offensive, however parental guidance is advised for younger viewers. While these films are legally able to be viewed by minors, these ratings do not indicate that the films have a primary appeal to minors.

When determining which films to feature on this special range of Instant Kiwi tickets, Lotto NZ ensured that each of the chosen films primarily appealed to an adult audience, which is supported by available audience data provided by the NZFC. Exit surveys undertaken by the NZFC during the release of *Hunt for the Wilderpeople* shows that the average age of the audience is 37.9. While exit surveys have only recently been introduced by the NZFC, we have been informed that this audience profile would remain similar across each of the four films featured on these tickets. This information supports Lotto NZ's belief that the four films featured on these tickets would primarily appeal to adult Instant Kiwi players, who are typically aged 30+.

It should also be noted that *Footrot Flats: The Dog's Tale*, *Whale Rider* and *The World's Fastest Indian* were released in 1986, 2002, and 2005 respectively, and thus are not likely have a strong appeal or connection with people who are minors in 2018.

The Instant Kiwi tickets and associated materials do not portray minors participating in activities in which they are under the legal age, and there is no direct or implied suggestion that minors portrayed will participate in gaming.

The complaint received by the Advertising Standards Authority reflects an industry viewpoint and, as a result, it is worth noting that no concerns have been raised regarding the ticket by consumers. The '40 Years of Kiwi Film' Instant Kiwi ticket has been on-sale since mid-July, and during this period Lotto NZ has not received any feedback or complaints from the public of a perceived appeal to minors.

In addition to ensuring that our Instant Kiwi tickets do not appeal to minors, Lotto NZ has a comprehensive compliance programme across our retail network to prevent the sale of Instant Kiwi tickets to minors. All retailers must ask anyone who looks under the age of 25 and wishes to buy an Instant Kiwi ticket for age identification.

Retailer compliance with the programme is measured through a network-wide mystery shopping programme, where each Lotto store is visited by an unknown shopper ('mystery shopper') and tested for their compliance to Lotto NZ's strict ID policy. Every store in the network is mystery shopped at least twice per year.

As a result, it is very difficult for a minor to purchase an Instant Kiwi ticket and no Lotto NZ retailer has ever been convicted of selling an Instant Kiwi ticket to someone who is underage.

We thank you for the opportunity to respond to this complaint.

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. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.