

<b>COMPLAINT NUMBER</b>	16/239
<b>COMPLAINANT</b>	A. Weaver
<b>ADVERTISER</b>	Spark NZ
<b>ADVERTISEMENT</b>	Spark Television
<b>DATE OF MEETING</b>	26 July 2016
<b>OUTCOME</b>	Not Upheld

## **SUMMARY**

The television advertisement for Spark tells a story about a working Dad who arrives home to relax after a busy day to find his daughter listening and dancing to loud music. He appears guilty about telling off his daughter and to make amends he is shown listening to the song at work before joining his daughter on the dance floor of a local community club to dance to the same song.

The Complainant said the images of a logging industry worker using a personal audio device whilst working around heavy machinery was not a good example of a safe work place especially in such a high risk industry.

The majority of the Complaints Board noted the actions of the Advertiser in considering the health and safety aspects to ensure no unsafe practices were shown in the advertisement. It said the advertisement did not show "Big Tony" working while listening to music and focused on a father and daughter relationship, and when considered in its entirety, it did not reach the threshold to encourage a disregard for safety and had been prepared with the requisite standard of social responsibility.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

### **[No further action required]**

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

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

The Complainant said the images of a logging industry worker using a personal audio device whilst working around heavy machinery was not a good example of a safe work place especially in such a high risk industry.

The Advertiser said the appropriateness of wearing headphones while working at a workplace depended on the circumstances of the individual work place and the activities being undertaken. The Advertiser said the advertisement showed Big Tony “wearing headphones at work where doing so is appropriate and not dangerous or illegal”. The Advertiser continued that the moments where the actor was seen wearing the headphones were fleeting and it was clear he was on a break from work. It said “while wearing headphones, he is some distance away from all other workers and is clear of any site hazards; and Spark has considered the Forestry Codes of Practice and whether any person in the Advertisement is portrayed to work in a manner likely to cause harm to themselves or others. As stated above, we are sure that the Advertisement does not show Big Tony carrying out any activities that breach that Code.”

The Complaints Board noted the Advertiser said it consciously presented safe workplace practices and employed independent third party health and safety advisors to provide guidance on those matters.

The Complaints Board considered the response from the Commercial Approvals Bureau which said, in part: “The man is not operating any machinery while using only one side of the listening device, and by all means may be in a worksafe area. Only certain types of work, in certain locations, at certain times on a work site restrict the use of listening devices - without guiding specifics there must be a rule for accepting due diligence on the behalf of the advertiser and agency.”

The Complaints Board turned to consider whether the advertisement depicted unsafe practices and was likely to encourage a disregard for safety.

The majority noted the actions of the Advertiser in considering the health and safety aspects to ensure no unsafe practices were shown. It said the scene with “Big Tony” listening to music did not show him working specifically, however it did show him in an environment with people working around him. The majority took into account the overall story of the advertisement which focused on a father and daughter relationship and said the advertisement did not reach the threshold to encourage a disregard for safety.

The majority of the Complaints Board said it could have been clearer to viewers that “Big Tony” was on a break while listening to music. However, the likely consumer takeout of the advertisement in its entirety mitigated the fleeting scenes and it noted the Advertiser had acted responsibly in seeking professional advice on the matter.

A minority disagreed and said the advertisement gave the impression it was appropriate to listen to music using headphones while working in what most people would consider a dangerous workplace. The minority said the takeout relating to the overall father and daughter story could have been conveyed with “Big Tony” in a more appropriate setting rather than in the timber yard. The minority said the advertisement depicted an unsafe practice that could easily be emulated and was likely to encourage a disregard for safety.

However, in accordance with the majority, the Complaints Board ruled the advertisement did not reach the threshold to breach Rule 12 and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

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

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## DESCRIPTION OF ADVERTISEMENT

The television advertisement for Spark tells a story about a working Dad who arrives home to relax after a busy day to find his daughter listening and dancing to loud music. He appears guilty about telling off his daughter and to make amends he is shown listening to the song at work before joining his daughter on the dance floor of a local community club to dance to the same song.

## COMPLAINT FROM A. WEAVER

This advert shows a logging industry worker using a personal audio device whilst working around heavy machinery. This is not a good example of a safe work place especially in such a high risk industry

## 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 NZ

1. We refer to your complaint notification letter of 13 July 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 logging industry worker (aka "Big Tony") using a personal audio device while working around heavy machinery. The complainant considers this not to be a good example of a safe work place especially in a high risk industry.

## 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 Spark's new brand campaign which focuses on "everyday moments of magic". It tells the story of a solo dad looking to connect with his daughter through music. To tell this story it was important that Big Tony could sneak in a few moments of his time at work to listen to his daughter's favourite song and understand it.

### Safety

7. Whether it is appropriate to wear headphones while working at a workplace depends on the circumstances of the work place and the actual activities being undertaken. In the Advertisement, Big Tony is only shown wearing headphones at work where doing so is appropriate and not dangerous or illegal:
  - a. the brief fleeting moments in which Big Tony can be seen wearing headphones at work he is not actually working or using heavy machinery. The intention was to convey that Big Tony is a foreman of the sawmill taking a short break from work to listen to music and we are confident that viewers see it that way;
  - b. Big Tony's actions are not causing harm, or likely to cause harm, to either himself or other people. While wearing headphones, he is some distance away from all other workers and is clear of any site hazards; and
  - c. Spark has considered the Forestry Codes of Practice and whether any person in the Advertisement is portrayed to work in a manner likely to cause harm to themselves or others. As stated above, we are sure that the Advertisement does not show Big Tony carrying out any activities that breach that Code.
8. Health and Safety is an important matter and Spark takes it very seriously. In the creation of the Advertisement (in both shooting the footage and in post production) Spark was consciously aware of the need to present safe workplace practices. Spark employed independent third party health and safety advisors to advise Spark on these matters. In addition to the safety conscious choices Spark made that are described in paragraph 7 above, you will also observe that Big Tony is wearing PPE (i.e. a high visibility jacket and safety boots) in each scene in which he is at work and that all of the other characters who are shown carrying out work are doing so appropriately and safely.
9. For these reasons, we do not believe that the Advertisement shows dangerous or illegal practices nor any situation that would encourage a disregard for safety. Accordingly, we do not believe the Advertisement breaches Rule 12 of the Code of Ethics.
10. 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.
11. The Advertisement was approved by the TVCAB.
12. We accordingly request a ruling from the Board that the complaint is not upheld.

13. Lastly, we point out that the independent third party health and safety advisors were present on set at all times prior to and during the film shoot and were actively involved in the decision making so as to ensure that the activity of shooting a commercial at a saw mill was safe for our people.

## **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 30/06/16 with a 'G' general classification. The commercial promotes Spark mobile services.

A complainant has expressed the view that the ad promotes unsafe practices, showing a man listening to headphones at a work site. Unfortunately, the complainant has not detailed any specific or general worksafe policies that this act might contravene e.g. those that might be easily found via ACC or the Ministry of Labour.

In the absence of any specific complaint, CAB must treat the matter generally noting that no particular unsafe behaviour is displayed. The man is not operating any machinery while using only one side of the listening device, and by all means may be in a worksafe area.

Only certain types of work, in certain locations, at certain times on a work site restrict the use of listening devices - without guiding specifics there must be a rule for accepting due diligence on the behalf of the advertiser and agency.