

<b>COMPLAINT NUMBER</b>	19/132
<b>COMPLAINANT</b>	M Shanks
<b>ADVERTISER</b>	Lion NZ Limited
<b>ADVERTISEMENT</b>	Smirnoff, Out of Home
<b>DATE OF MEETING</b>	30 April 2019
<b>OUTCOME</b>	Not Upheld

## SUMMARY

The billboard advertisement at Melling Bridge in Lower Hutt for Smirnoff Vodka, shows a glass with ice with half a coconut sitting on top with a triangle of pineapple inside that. The words “Play & Time” sit either side of the image which also shows a bottle of Smirnoff vodka.

The Complainant is concerned that the billboard advertisement could have strong appeal to minors by using the word “play” in association with alcohol. The Complainant is also concerned about the placement of the billboard as it would be seen by minors.

The Advertiser said the image of a pineapple triangle inside a coconut half was symbolising a play button as well as representing cocktail ingredients for a pina colada and the playful element of an exotic, holiday vibe. It said the advertisement should be considered in the context of the Pure Potential campaign. The Advertiser does not consider the billboard has strong or evident appeal to minors. The placement of the billboard is near the commercial centre of Lower Hutt and only two schools are located within a 1km radius.

The Media said it had abided by the exclusion zones for alcohol to minimise exposure to minors.

The Complaints Board did not consider the content of the advertisement had been directed at minors or had strong or evident appeal to minors in particular.

The Complaints Board noted the information from the media that the placement of the advertisement complied with the rules for advertising alcohol, including the exclusion of school zones.

The Complaints Board said the advertisement had been prepared and placed with a high standard of social responsibility taking into account the context, medium, audience and product.

It ruled the advertisement was not in breach of Principle 1 or Principle 3 of the Code for Advertising and Promotion of Alcohol.

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 Principle 1 and Principle 3 of the Code for Advertising and Promotion of Alcohol

Principle 1 required the Complaints Board to consider whether the advertisement had observed a high standard of social responsibility.

Principle 3 required the Complaints Board to consider whether the advertisement had been directed at adult audiences and not directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

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

### **The Complaint**

The Complainant is concerned that the billboard advertisement could have strong appeal to minors by using the word “play” in association with alcohol. The Complainant is also concerned about the placement of the billboard as it would be seen by minors.

### **The Advertiser’s Response**

The Advertiser said the image of a pineapple triangle inside a coconut half was symbolising a play button as well as representing cocktail ingredients for a pina colada and the playful element of an exotic, holiday vibe. It said the advertisement should be considered in the context of the pure potential campaign. The Advertiser does not consider there is strong or evident appeal to minors. The placement of the billboard is near the commercial centre of Lower Hutt and only two schools are located within a 1km radius.

### **The Media’s Response**

The Media, APN Outdoor, said that given the out of home nature of the advertisement it would be impossible to eliminate the chance that minors could see the billboard, but it had abided by exclusion zones for alcohol to minimise exposure to the advertisement by minors.

### **Complaints Board Discussion**

#### *Consumer Takeout*

The Complaints Board began by discussing the likely consumer takeout of the advertisement and agreed it is advertising a vodka cocktail and evoked a recreational, exotic feeling.

The Complaints Board noted the Advertiser’s response that the advertisement should be viewed in the context of the overall Pure Potential campaign. The Board said the advertisement was required to stand alone in terms of content and placement rather than as part of a campaign.

#### *Is the content of the advertisement likely to appeal to minors?*

The Complaints Board confirmed that the definition of a minor is those under the age of 18 who are not entitled to legally purchase alcohol.

The Complaints Board said the image of the coconut and the pineapple forming a ‘play’ button was unlikely to resonate with younger audience members. The Board said the pina colada cocktail suggestion was an adult themed drink which would not have a high appeal to minors.

The Complaints Board said the words ‘Play time’ had meanings other than those associated with young children and evoke the holiday vibe being suggested by the advertisement.

*Is the placement of the advertisement an issue?*

The Complaints Board considered the placement of the advertisement and whether the expected average audience included a significant proportion of minors. While acknowledging the billboard medium gave unrestricted access to the advertisement, the Complaints Board said the content was not directed at minors and it noted media confirmation that the placement complied with the rules for advertising alcohol, including the exclusion of school zones.

*Is the advertisement socially responsible?*

The Complaints Board said the advertisement had been prepared and placed with a high standard of social responsibility taking into account the context, medium, audience and product.

The Board ruled the advertisement was not in breach of Principle 1 or Principle 3 of the Code for Advertising and Promotion of Alcohol.

The Complaints Board ruled the complaint was Not Upheld.

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### **DESCRIPTION OF ADVERTISEMENT**

The billboard advertisement at Melling Bridge in Lower Hutt for Smirnoff Vodka shows a glass with ice with half a coconut sitting on top with a triangle of pineapple inside that. The words "Play" & "Time" sit either side of the image which also shows a bottle of Smirnoff vodka.

### **COMPLAINT FROM M SHANKS**

This billboard advertisement is contrary to PRINCIPLE 3: alcohol advertising and promotions shall be directed at adult audiences. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. THIS APPLIES TO BOTH CONTENT AND PLACEMENT. The advertising codes consist of the Advertising Standards Code and the five sector Codes where advertisers are expected to take particular care; Alcohol, Children and Young People, Finance, Gambling and Therapeutic and Health advertising. Key requirements of these codes include truthful presentation and a sense of social responsibility

### **FURTHER FROM COMPLAINANT**

The offensive billboard is directed to everyone who drives, walks or cycles past the Melling Bridge. That is the intent of a billboard and of course there will be children who are walking, cycling and in cars that pass this billboard. I never said it was directed at minors specifically but it is certainly seen by minors so it contradicts PRINCIPLE 3: ALCOHOL ADVERTISING AND PROMOTIONS SHALL BE DIRECTED AT ADULT AUDIENCES. ALCOHOL ADVERTISING AND

PROMOTIONS SHALL NOT BE DIRECTED AT MINORS NOR HAVE STRONG OR EVIDENT APPEAL TO MINORS IN PARTICULAR. THIS APPLIES TO BOTH CONTENT AND PLACEMENT. The billboard also has a strong and evident appeal to minors because it emphasizes PLAY in association with alcohol. Also, as stated in my compliant, the advertisement is socially irresponsible.

### **CODES OF PRACTICE**

#### **CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL**

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

**Principle 3:** Alcohol advertising and promotions shall be directed at adult audiences. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

## RESPONSE FROM ADVERTISER, LION NZ LIMITED

### COMPLAINT 19/132: SMIRNOFF "PLAY TIME"

1. Lion NZ Limited ("Lion") is the advertiser that produced the Smirnoff "Play Time" billboard advertisement ("Advertisement") that is the subject of the above complaint ("Complaint").

#### Summary of the Complaint

2. The Complaint concerns the Advertisement on Melling Bridge in Lower Hutt, Wellington. We enclose at Schedule 1 a picture of this Advertisement. The Complainant has stated that he considers that the Advertisement, by virtue of being capable of being seen by minors and through use of the word "PLAY", is not directed at adult audiences and that the Advertisement has a strong and evident appeal to minors.

#### The Advertisement

3. The Advertisement features half a coconut resting on a glass with a triangular piece of pineapple (representing a "play" button) in the centre of the coconut and the words "PLAY TIME" displayed behind (and to either side) of the glass. On the bottom left of the Advertisement is an image of the top half of a Smirnoff bottle and the words "WE SEE #PUREPOTENTIAL". The bottom left of the Advertisement displays the Cheers! logo and a reference to the Cheers! website at [www.cheers.org.nz](http://www.cheers.org.nz) (which encourages responsible alcohol consumption).
4. The Advertisement is part of the Smirnoff #PUREPOTENTIAL campaign, which features a range of billboards of similar designs showing various ingredients in cocktail glasses and referring to potential occasions when these types of cocktails could be enjoyed. The ingredients shown in other billboards include coffee, chilli and honey. Other examples of these billboards from the Smirnoff campaign are enclosed as Schedule 2. The billboards are the centrepiece of the highly-awarded, long-running integrated campaign that has seen Kiwis "Instagramming" the contents of their fridge in return for personalised cocktail recipe videos.
5. Another of the Smirnoff #PUREPOTENTIAL billboards was the subject of Complaint 18/176 which focused on whether a similar creative involving an espresso martini cocktail and the words "NIGHT SHIFT" (as shown in Schedule 2) breached Principles 1, Principle 2 or Guideline 2(b) of the Code for Advertising and Promotion of Alcohol ("ASA Alcohol Code"). This complaint was not upheld on the grounds that the complainant's interpretation of the advertisement (that it promoted adding vodka to coffee and drinking during work hours) was atypical and not a reflection of the likely consumer takeout. In rejecting the complaint, the majority of the Complaints Board concluded that Lion was not in breach of its obligation to observe a high standard of social responsibility (Principle 1).

6. The Advertisement that is the subject of this Complaint was designed with reference to coconut and pineapple as the key ingredients in the cocktail - alluding, of course, to the popular flavour combination that is the subject of a piña colada. Piña colada cocktails are one of the most recognisable cocktails in the world and are typically associated with vacations, warm climates and relaxation.<sup>1</sup> A traditional piña colada features rum as the main alcoholic ingredient but a variant of this cocktail that substitutes vodka for rum is not uncommon (sometimes called a "Chi Chi"). Irrespective of the primary alcoholic beverage, the coconut/pineapple flavour profile is synonymous with a piña colada.
7. This is also supported by the general theme of the campaign, which includes combining different ingredients to create new or unusual cocktails. The Advertisement needs to be considered in the context of the campaign.
8. The Advertisement was intended to promote the use of Smirnoff vodka in piña colada-type cocktails and the use of the words "PLAY TIME" was a reference to the connotations of holidaying, fun and playful behaviour that the flavours of pineapple and coconut typically evoke with consumers.

### **Consideration of the relevant Advertising Codes**

9. The Authority has raised the ASA Alcohol Code - Principle 1 and Principle 3. We have set out the relevant Codes and our response below.
10. Principle 1 of the ASA Alcohol Code states:  
Alcohol advertising and promotions shall observe a high standard of social responsibility.
11. Principle 3 of the ASA Alcohol Code states:  
Alcohol advertising and promotions shall be directed at adult audiences. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.
12. The Guidance Note to Principle 3 of the ASA Alcohol Code states that "the selection of media, placement, style of presentation, content and context where ads appear are all key factors in determining Code Compliance".

### **Content**

13. The Complainant appears to have mistakenly formed the view that the use of the words "PLAY TIME" is directed at or has strong / evident appeal to minors. The Complainant has also asserted that, by virtue of the Advertisement being visible in a public place, the Advertisement is in breach of Principle 3.
14. This is not what is intended in the Advertisement and we do not consider that the Complainant's impression is consistent with how the typical, reasonable consumer would interpret the Advertisement. While we appreciate that the Complainant's view is genuine, we strongly submit that use of the words "PLAY TIME", while sometimes used with reference to children in an everyday context, does not in and of itself result

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<sup>1</sup> See <http://www.stuff.co.nz/life-style/food-wine/drinks/8219178/The-Cocktail-Diaries-Pina-Colada> for references to piña coladas as a "Pacific Island holiday favourite for many Kiwis".

in the Advertisement having strong or evident appeal to minors. The reference in the ASA Alcohol Code is to “strong or evident” appeal which necessarily requires a level of appeal over and above the level that one would typically associate with words used to refer to children in an everyday context. Similarly, coconuts and pineapples are not typically associated with children.

15. Viewed in its entirety, the Advertisement does not appeal to minors: there are no particularly colourful or stylised designs, nor are there any motifs or cartoon characters. The font used is relatively neutral and understated, and is in plain red throughout. The Smirnoff logo and a bottle of Smirnoff vodka (both clearly of no specific appeal to minors) are the only pieces of substantive content on the Advertisement outside of the image and copy that are the subject of the Complaint.
16. As was noted in Complaint 18/176, the focus should be on determining what is the likely consumer take-out. For the reasons set out above, Lion submits that consumers are unlikely to associate the Advertisement with children or a child’s “play time”. Instead, we consider that most consumers would focus on the link between the words “PLAY TIME” and the “play” button symbol formed by the pineapple and coconut. To the extent that the relevance of the words “PLAY TIME” comes into question, Lion submits that the reasonable consumer would draw a connection between these words and the notions of holidaying, leisure and relaxation that a reference to piña colada flavours would promote. At no stage does the Advertisement (nor the Complaint) suggest that the consumption of alcohol is portrayed as being a necessity or required for relaxation.

### **Placement**

17. The Advertisement that is the subject of this Complaint is a billboard displayed on the Melling Link off State Highway 2 on the road leading into Lower Hutt, Wellington. This is a busy road for commuters going to/from Wellington City and is located near the busiest commercial area of Lower Hutt. Of the near 60 schools contained in the Lower Hutt region, only two are located within a 1km radius of the Advertisement.
18. The Advertisement is placed directly next to Carpet Court and Repco Auto Centre stores and prior to a roundabout that has, in its immediate vicinity, a car dealership as well as electronics, furniture and bed stores.
19. Accordingly, the Advertisement:
  - a) observes a high standard of social responsibility; and
  - b) is not directed at minors, nor does it have strong or evident appeal to minors.

### **Conclusion**

20. In light of the above, we ask that the Complaints Board determines that the Complaint is not upheld and finds that the Code for Advertising and Promotion of Alcohol - Guideline 2(b), Principle 1, Principle 2 have not been breached.
21. Our client would welcome the opportunity to respond to any further comments or queries that you may have.

### **RESPONSE FROM MEDIA, APN OUTDOOR LTD**

Thank you for sending through the complaints raised against this campaign by Smirnoff.

Out of home is a broadcast medium and as such we are unable to eliminate any minor who may be 'walking, cycling and in cars' that pass this billboard.

As a media company we abide by the rules surrounding 'exclusion zones' for alcohol for minors very seriously and all sites for any alcohol brand falls outside of these zones.

#### **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.