

COMPLAINT NUMBER	19/369
COMPLAINANT	Alcohol Healthwatch
ADVERTISER	National Brands
ADVERTISEMENT	Nitro, Facebook
DATE OF MEETING	30 October 2019
OUTCOME	Upheld Advertisement Removed

Description of Advertisement

The Facebook advertisement for Nitro Vodka Guarana is headed “Zero Regrets” with three bottles of the product in the foreground. The picture shows an image of the legs of two bodies on a bed covered in a sheet. The position of the legs suggests one body is lying on top of the other. The wording next to the image says in part “Nitro Zero Sugar = Zero Regrets. Warning Nitro is the Strongest Energy RTD formulation and is pumped with Guarana so you may not get that much sleep...which sometimes aint a bad thang.”

Summary of the Complaint

The Complainant is concerned the advertisement is implying alcohol can lead to sexual and social success and has not observed the high standard of social responsibility required of alcohol advertising.

Issues Raised

- Social Responsibility
- Linking Alcohol to sexual success

Summary of the Advertiser’s Response

The Advertiser said the advertisement shows two people lying in bed in the morning without feeling any regrets about sleeping late. There is no inference to any sexual activity.

The Advertiser said it is promoting a zero sugar beverage with the underlying message that there is no guilt due to the low carbs associated with normal RTD’s, beer or wine.

The Advertiser said it has removed the post on a without prejudice basis.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a Facebook advertisement for Nitro Vodka Guarana which said “Zero Sugar = Zero regrets” and showed an image of the legs of two bodies on a bed covered in a sheet. The majority of the Complaints Board said the combination of the image and the wording linked an alcohol product to sexual success.

The Board said this breached Principle 1 and Rule 1(c) of the Code for Advertising and Promotion of Alcohol.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following code

CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL

Principle 1: Alcohol Advertising and Promotions shall observe a high standard of social responsibility.

Guideline 1(c): Alcohol advertising and promotions shall not suggest that alcohol can lead to sexual, social, sporting or business success or popularity or is necessary to achieve social status with peers.

Principle 2: Alcohol Advertising and Promotions shall be consistent with the need for responsibility and moderation in alcohol.

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.

Preliminary Matters

The Complaints Board noted the request of the Complainant to consider all posts on the Nitro Facebook page. The Chair confirmed that process the Board followed is to consider each advertisement complained about, on a case by case basis. This approach is also applied to website content.

The Complaints Board did not consider Principle 2 or Principle 3 were relevant to the complaint before it and therefore did not consider these principles as part of its deliberation.

Relevant precedent decision

In considering this complaint the Complaints Board referred to precedent Decision 19/207 which was Upheld.

The full version of this decision can be found on the ASA website

<https://www.asa.co.nz/decisions/>

Decision 19/207 concerned a Facebook advertisement for Nitro RTDs and was titled 'Weekend Bonding' with the letters 'age' written over the original 'ing' to make the word bondage. A woman in a cropped top and open shorts with outstretched arms tied with ropes to vodka bottles.

The Complaints Board was of the view that there was an undeniable sexual element to the advertisement which was reinforced by the word 'bondage' replacing the word 'bonding' and the reference to "hump mate". The Complaints Board said this connection did suggest that alcohol can lead to sexual success or popularity and was in breach of Guideline 1(c) of the Code for Advertising and Promotion of Alcohol.

Complaints Board Discussion

Consumer Takeout

The majority of the Complaints Board said the likely consumer takeout of the advertisement was one of implied intimacy given the image dominated the advertisement and the position of the legs in the bed showed one person lying on top of the other. The majority of the Board said the message of "zero regrets" and the lack of sleep, related to the Nitro product keeping people awake all night and having sex.

A minority of the Complaints Board disagreed and said the main takeout of the advertisement was the high energy and zero sugar element of the product and this was the focus of the “zero regrets” quote in the advertisement.

Does the advertisement suggest that alcohol can lead to sexual success?

The majority of the Complaints Board did not consider the likely consumer takeout of the image would be that there were no regrets about sleeping in, in the morning, as suggested by the Advertiser. It said there was an undeniable sexual element to the advertisement linked to consumption of the alcohol product, which was reinforced with the wording “Get amongst it with ya mate!” The majority of the Complaints Board said this suggested that alcohol can lead to sexual success and was in breach of Guideline 1(c) of the Code for Advertising and Promotion of Alcohol.

A minority of the Board did not consider the advertisement implied that any sexual activity suggested in the advertisement was as a result of drinking Nitro and did not consider it had reached the threshold to breach Rule 1(c).

Does the advertisement observe a high standard of social responsibility?

The majority of the Complaints Board said that given the likely consumer takeout, the advertisement had not observed a high standard of social responsibility, taking into account context, medium, audience and product.

In accordance with the majority, the Complaints Board said the advertisement was in breach of Principle 1 and Guideline 1(c) of the Code for Advertising and Promotion of Alcohol.

The Complaints Board noted the Advertiser has defended the complaint and removed the advertisement on a “without prejudice basis”. In these circumstances, the majority of the Complaints Board ruled to Uphold the complaint.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement removed and not to be used again in its current form.

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.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT FROM ALCOHOL HEALTHWATCH

This complaint relates to an alcohol advertisement on Facebook for Nitro Vodka Guarana Drink.

The advertisement was published on Facebook at 9:53am on September 6, 2019 on the Nitro Facebook page.

The advertisement features the feet and lower legs of two individuals, lying under white sheets on a bed. The post is displayed at the end of this letter.

We believe the advertisement breaches Principle 1 of the ASA Code for Advertising and Promotion of Alcohol:

Alcohol advertising and promotions shall observe a high standard of social responsibility.

We also believe that this advertisement specifically breaches Guideline 1 (c) of the ASA Code for Advertising and Promotion of Alcohol:

Alcohol advertising and promotions shall not suggest that alcohol can lead to sexual, social, sporting or business success or popularity or is necessary to achieve social status with peers.

We believe that the image and the accompanying text in the advertisement implies sexual and social success.

Further to this specific advertisement, we note that additional complaints against Nitro advertisements were considered by the Complaints Board on 9 July 2019. The complaints were upheld in regard to Principles 1 and 2 of the Code for Advertising and Promotion of Alcohol, but not in relation to Principle 3 (Complaint number 19/207).

Given the nature of the breaches identified in Complaint 19/207, and the on-going apparent reluctance of the advertiser to attempt to comply with the Code for Advertising and Promotion of Alcohol, we also ask that the Complaints Board consider the Nitro Facebook account **as a whole**, and assess each advertisement against the principles of the Code for Advertising and Promotion of Alcohol. It is clearly evident that this social media site requires on-going vigilance, and we believe that this role is the responsibility of the ASA and not Alcohol Healthwatch.

It is of particular concern that we note this apparent breach so soon after having an upheld complaint against previous advertisements by the same advertiser. This not only reflects very poorly on the advertiser but also on the Advertising Standards Authority, the Code for Advertising and Promotion of Alcohol, and the self-regulation of alcohol advertising.

Appendix 2

RESPONSE FROM ADVERTISER, NATIONAL BRANDS

Please see below responses to complainant N Jackson and your letter dated 2 October 2019.

Alcohol Healthwatch Complaint: The advertisement features the feet and lower legs of two individuals, lying under white sheets on a bed. The post is displayed at the end of this letter. We believe the advertisement breaches Principle 1 of the ASA Code for Advertising and Promotion of Alcohol:

Alcohol advertising and promotions shall observe a high standard of social responsibility.

We also believe that this advertisement specifically breaches Guideline 1 (c) of the ASA Code for Advertising and Promotion of Alcohol:

Alcohol advertising and promotions shall not suggest that alcohol can lead to sexual, social, sporting or business success or popularity or is necessary to achieve social status with peers.

We believe that the image and the accompanying text in the advertisement implies sexual and social success.

Response:

The imagery shows 2 people lying in bed in the morning. The lighting in the room clearly shows this is a later morning. There is no inference to any sexual activity.

The advertisement is promoting a ZERO SUGAR beverage with the underlying message that if you want to sleep in in the morning you don't have to feel guilty or have regrets about getting up early, or missing out on your early morning run as when you drink Zero Sugar you are not drinking all the carbs associated with normal RTD's, beer or wine.

It appears that the claimant Alcohol Healthwatch may have some bias towards any alcohol advertng and alcohol in general.

We believe the advertisement does not breach any advertising standards However to avoid wasting ASA's time we have on a without prejudice basis, removed the post from Facebook.