

COMPLAINT NUMBER	20/285
ADVERTISER	Future Bars
ADVERTISEMENT	minus 5° Ice Bar, Out of Home
DATE OF MEETING	11 August 2020
OUTCOME	Upheld in Part Advertisement 2 to be amended or removed

Summary of the Complaints Board Decision

The Complaints Board Upheld a complaint about one advertisement for the minus 5° Ice Bar displayed outside its premises. This is because the advertisement was found to be an alcohol advertisement which included an image of a minor.

The Complaints Board did not Uphold another advertisement which featured the name of the business and an image of a minor as this was not found to be an alcohol advertisement.

Advertisement One

Advertisement One shows a minor in a woollen hat licking an ice drink beside the name of the premises “minus 5° Ice Bar.”

Advertisement Two

Advertisement Two is at the front entrance of the premises with images of four people. The first is a minor in a woollen hat licking an ice drink, the second is a man in winter clothing pouring drinks from two bottles of Absolut Vodka, the third is a woman dressed in winter clothing holding a cocktail and lastly, a man with ear protectors making an ice sculpture. In the centre of these images is the premises name “minus 5° ICE BAR.”

Summary of the Complaint

The Complainant is concerned that advertisement signage for a bar should not feature a child when its primary function is the service of alcohol. The Complainant said this is not a family restaurant or family activity and the child’s image is shown alongside the word bar.

Issues Raised:

- Social Responsibility
- Directing Alcohol Advertising to Adults
- Minors featured in Alcohol Advertising

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said it is not connecting minors with alcohol. The Advertiser said the ice bar is an activity as opposed to a traditional bar with a primary focus of families and tourists and is marketed as an adventure or experience. It hosts many school groups throughout the year and provided examples of Plunket fund raisers

The Advertiser said the use of the word bar is not exclusive to alcohol outlets. The Advertiser’s liquor license has a designation of Unsupervised from 9am to 7pm highlighting the emphasis of the ice experience over alcohol experience.

The Advertiser said the advertisement is also being used in other family targeted campaigns and family passes account for 15% of total entries sold.

Relevant ASA Codes of Practice

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

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.

Guideline 3(b): Alcohol advertising and promotions shall not use designs, motifs, or cartoon characters that have strong or evident appeal to minors or that create confusion with confectionary or soft drinks.

Guideline 3(c): Anyone visually prominent in alcohol advertising and promotions depicting alcohol being consumed shall be, and shall appear to be, at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older. Minors may appear in alcohol advertising and promotions only in situations where they would naturally be found, for example in a family barbecue, provided that there is no direct or implied suggestion that they will serve or consume alcohol.

Complaints Board Discussion

The Complaints Board began by reiterating the definition of alcohol advertising as stated in the Code for Advertising and Promotion of Alcohol, this states:

“Alcohol advertising and promotion” means an advertisement, packaging, point of sale or other promotions, activities and materials (including dispenser units) generated by an alcohol producer, distributor or retailer that promotes alcohol by product, brand or outlet.

The Board also noted the guidance in the Code states:

“An advertisement including a reference to licensed premises is not automatically an alcohol advertisement – the intent of the advertisement must be to promote the consumption of alcohol.”

The Complaints Board considered each of the advertisements in turn:

Advertisement One

Consumer takeout

The Complaints Board said the likely consumer takeout of the image which the Advertiser identified as displayed at the internal wharf entrance, is the child featured in a winter hat licking a drink made from ice is this is one of the experiences to be had at the minus 5° Ice Bar.

Is Advertisement One an alcohol advertisement?

The Complaints Board referred to the above guideline in considering whether Advertisement One met this definition. The majority of the Complaints Board said the single image of a child promoting one of the ice experiences on offer at the premises did not have the intent to promote alcohol.

The majority of the Board said the dual purpose of the establishment as both a licenced premise and an Antarctic experience meant the image of the child on its own reflected one of the family-oriented aspects of the business. The Board also took into account the business had an Unsupervised licence from 9am to 7pm which allows anyone, of any age to be present on the premises. The majority of the Board said the use of the word “bar” in the absence of any images of alcohol was not sufficient to meet the definition of a alcohol advertisement.

A minority of the Complaints Board disagreed given the position of Advertisement One above an entrance when vodka bottles can be seen from the outside of the premises.

For a minority of the Complaints Board, the context and placement of the advertisement meant the proximity to a license premises with alcohol displayed nearby together with the use of the word “bar” in proximity to the advertisement with a minor featured was in breach of the Code for Advertising and Promotion of Alcohol.

However, in accordance with the majority, the Complaints Board said Advertisement One was not an alcohol advertisement and therefore was not be in breach of Principle 1, Principle 2 or Guidelines 3(b) or 3(c) of the Code for Advertising and Promotion of Alcohol.

Advertisement Two*Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement at the front entrance to the premises is there are a range of experiences available including Antarctic ice activities and sculptures for children, as well as alcohol consumption.

Is Advertisement Two an alcohol advertisement?

The Complaints Board said the advertisement is an alcohol advertisement and therefore subject to the Code for Advertising and Promotion of Alcohol.

This is because the advertisement contains branded bottles of Absolut Vodka in one of the four images. The Board said, the use of the vodka bottles being poured demonstrated an intent to promote the consumption of alcohol as noted in the definition of alcohol advertising.

Is the advertisement directed at minors or have strong or evident appeal to minors?

The Complaints Board said of the four images featured on the Advertisement two were likely to have appeal to minors. The image of the child licking a drink made of ice is the most prominent of the four and would be engaging to minors. The Board unanimously agreed that despite the establishment having a dual function as both a family experience and a licensed bar, positioning an engaging image of a minor next to an image promoting the consumption of alcohol was in breach of Principle 3 of the Code for Advertising and Promotion of Alcohol.

Is the minor in the advertisement in an environment in which they would naturally be found?

The Complaints Board noted the Advertiser’s explanation regarding the emphasis on its establishment’s family friendly activities and acknowledged that the premises provided a number of activities, one of which was the opportunity for adults to consume alcohol. However, the Board said despite this, the minors’ image directly next to the bartender pouring vodka shots meant the advertisement was an alcohol advertisement and it was a breach of

the Code to include images of minors in that context or images that would be of appeal to minors.

The Complaints Board agreed with the Advertiser the word “bar” can be used in a variety of contexts. However, the Board said the use of the word in Advertisement Two in combination with the image of bartender with the vodka bottles made an explicit link to alcohol.

The Complaints Board ruled Advertisement Two was in breach of Guideline 3(c) of the Code for Advertising and Promotion of Alcohol.

Does the advertisement use a design, motif or characters which have strong appeal to minors?
The Complaints Board said the advertisement did not use characters motifs in its design and ruled the advertisement was not in breach of Guideline 2(b) of the Code for Advertising and Promotion of Alcohol.

Does Advertisement Two observe a high standard of social responsibility?
The Complaints Board ruled the advertisement did not observe a high standard of social responsibility, taking into account context, medium, audience and product and was in breach of Principle 1, Principle 3 and Guideline 3(c) of the Code for the Advertisement and Promotion of Alcohol.

Outcome

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

Advertisement One - No Further Action Required.

Advertisement Two- To be Amended or Removed.

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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

I feel that this large outdoor alcohol advertisement prominently featuring a young child on the exterior of a licensed bar breaches the Principles 1 and 3 of the Code for Advertising and

Promotion of Alcohol. Guideline 3 (c) states:

Anyone visually prominent in alcohol advertising and promotions depicting alcohol being consumed shall be, and shall appear to be, at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older. Minors may appear in alcohol advertising and promotions only in situations where they would naturally be found, for example in a family barbecue, provided that there is no direct or implied suggestion that they will serve or consume alcohol.

I feel that using featuring a child on the main advertisement for a bar is not consistent with the Code. A bar's primary business is the service of alcohol, and is not a situation where children would naturally be found. This is not a family restaurant or family activity. Many alcoholic drinks can look similar to one the child is drinking. This child is portrayed on their own next to the word bar and the photo is used twice on the very small exterior of the shop

Appendix 2

RESPONSE FROM ADVERTISER, MINUS 5° ICE BAR

The letter we received from you has caught us completely off-guard. We are literally taken aback that someone believes that we are connecting minors with alcohol. Upon reading the complaint, it is clear the complainant is not familiar with our business or the amount of families we have visit our business. We would like to defend the complaint received.

Following the guidelines set in appendix 1 of the letter received, I can confirm:

- This advert is displayed at our principal entrances
- I have attached photos of each advertisement
- This advert is also currently used in other family targeted advertising – ie the Kidzgo magazine and iTag brochures.
- Our target audience is quite broad as we cater to pretty much everyone. We are very much an activity as opposed to a traditional bar. Our primary market is tourism based, focusing on families and FIT's.
 - We host many school groups throughout the year.
- Tools used to target our audience include brochures found in information centres, placements in hotel compendiums, digital and social media.

We feel that this complaint is unsubstantiated for many reasons.

1. The use of the word 'bar' is not exclusive to alcohol or service of alcohol. It is a broad term used emphasize the main objective of the outlet. This is backed up by many family friendly places using the term 'bar'; coffee bar, juice bar, smoothie bar, cookie bar

(Cookie Time), pizza bar, taco bar, etc. In our instance, we are all about ice, hence being an 'ice bar'. Everything in our bar is made of ice, except the floor and the ceiling. We have ice walls, ice structures, ice sculptures, ice benches and ice glasses.

2. In the attached photos, you will be able to see that we clearly market and emphasise the experience that we offer, as opposed to the sale of alcohol. We market as an 'ice adventure', 'an Antarctic experience' and 'Queenstown's coolest adventure'. We are all about the experience. We invest significantly to refresh our ice every 12 weeks and undergo intense training so that our staff can share this experience with our guests.
3. Last financial year, we had a total of 54,627 entries into the ICE BAR, with family passes accounting for 15% of our total entries sold. This does not include the entries that occur each year at our 'Santa's Grotto', which is an annual fundraiser held over 3-5 days for Plunket (raising an average of \$2,000 each year).
4. Our liquor license has a designation of 'Unsupervised' from 9am to 7pm, highlighting our emphasis on ice experience as opposed to alcohol related experience.
5. All drinks in our business are served in ice glasses. This includes mocktails, which are 100% alcohol free. The child in this picture is drinking a mocktail.

I hope this letter, along with the attached supporting evidence, helps paint a clearer picture of our offering