

<b>COMPLAINT NUMBER</b>	20/561
<b>ADVERTISER</b>	Lion Beer Spirits & Wine (NZ) Limited
<b>ADVERTISEMENT</b>	Steinlager Television
<b>DATE OF MEETING</b>	10 February 2021
<b>OUTCOME</b>	Not Upheld No further action required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a television advertisement for Steinlager which showed a re-enactment of the Peace Flotilla that protested against French nuclear testing in the Pacific. The Board said the advertisement was not misleading and the likely consumer takeout was it was a fictional recreation of an historical event. The Board said the advertisement was promoting the Steinlager brand, by associating it with a great achievement which New Zealanders had been involved in.

### **Advertisement**

The television advertisement for Steinlager showed a re-enactment of the Peace Flotilla that protested against French nuclear testing in the Pacific. The song “Go your own way” by Fleetwood Mac played throughout the advertisement. The text at the end of the advertisement said “In 1995, 97 Kiwis risked their lives to help stop nuclear testing in Mururoa. There have been no nuclear tests in the Pacific since. Here’s to doing things our way”. The advertisement ends with the Steinlager logo and the text “New Zealand’s Finest”.

### **Summary of the Complaint**

The Complainant was concerned the advertisement was in bad taste and misleading because there is zero connection between this event and Steinlager.

### **Issues Raised:**

- Social responsibility
- Truthful presentation

### **Summary of the Advertiser’s Response**

The Advertiser said the Steinlager brand is associated with New Zealanders who have excelled on the local and world stages, the Peace Flotilla campaign was part of celebrating “New Zealand’s Finest”. It is clear the Advertisement is fiction and a brief summary of the event in question.

## 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.

**Guideline 1 (h):** Alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/095 and 20/555, both of which were Not Upheld.

The full versions of these decisions can be found on the ASA website:

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

**Decisions 20/095 and 20/555** both concerned a television advertisement for Spark NZ Ltd which showed what appeared to be black and white footage of New Zealand scientist Lord Ernest Rutherford sitting at a desk reading from a sheet of paper. Lord Rutherford's speech has been altered using technology, so it appears he is saying "125 years ago, my research helped give rise to the first form of wireless communication. Since then, the world has witnessed unprecedented innovation. Today, machines learn, information has become currency, and we now stand at the dawn of 5G, the fifth generation of wireless technology..."

The complainants were concerned the advertisement was misleading because it shows Lord Rutherford speaking favourably about a Spark product, as if he is using his own words.

The Complaints Board said there were sufficient cues in the advertisement to ensure consumers were not misled that it was actually Lord Rutherford who was speaking, using his own words.

### Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was: Steinlager is promoting its brand by associating it with the pride of doing things the "Kiwi way". In this example the "Kiwi way" involved New Zealanders taking part in a protest against French nuclear testing in the Pacific. Support for this takeout came from the Fleetwood Mac song that played throughout the advertisement.

*Was the advertisement misleading?*

The Complaints Board said the advertisement was not misleading. The Board said it was promoting the Steinlager brand, by associating it with a great achievement which New Zealanders had been involved in. The Board said the likely consumer takeout of the advertisement was this was a fictional recreation of an historical event. The Board agreed the Advertiser did not make any direct claims that it was involved with supporting the protest yacht at the time this voyage happened. The Advertiser is connecting the Steinlager brand with the New Zealand national identity by associating it with this event.

*Did the advertisement observe a high standard of social responsibility?*

The Complaints Board said the advertisement did observe a high standard of social responsibility, taking into account context, medium, audience and product and was not in breach of Principle 1 or Guideline 1(h) of the Code for Advertising and Promotion of Alcohol.

**Outcome**

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

No further action required.

**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 calendar days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
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### Appendix 1

#### COMPLAINT

I would like to make a formal complaint about the Steinlager "Peace Flotilla" television advertisement which is currently airing on television (you can see it here also <https://campaignbrief.co.nz/2020/12/07/steinlager-raises-a-toast-tonew-zealands-finest-in-latest-campaign-via-ddb-aotearoa/>).

I cite Principle 1 Guideline 1 (h) of the Code for Advertising and Promotion of Alcohol. This advertisement uses the real life event of the Peace Flotilla and the heroic efforts of some every day Kiwis in protesting nuclear testing in the pacific. There is absolutely zero connection between this event and Steinlager and therefore MUST "create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer." Their attempt to connect the event with their brand is that us Kiwis do things our own way. This is weak.

To try instill national pride in order to promote their alcohol brand is not only bad taste but just down right unethical. I am by no means an ultra conservative person but I feel personally responsible to call out Steinlager. New Zealand's already has a problematic drinking culture and to let Steinlager get away with paying big money to marketing and PR companies to promote their brand is plainly irresponsible.

If you do not uphold this complaint then where will this end? How putting a beer in Kate Sheppard's hand at the voting booth? Or how about Sir Edmund Hillary skulling a beer at the top of Mt Everest? That is what this is - deceptive and misleading

## Appendix 2

### RESPONSE FROM ADVERTISER, LION BEER SPIRITS & WINE (NZ) LIMITED

#### Lion Television – Complaint 20/561 and Lion Digital Marketing Complaint 20/608

We act for Lion – Beer, Spirits & Wine (NZ) Limited ("**Lion**") in relation to Lion's "Steinlager - New Zealand's Finest: Peace Flotilla" campaign, including the television advertisement and digital marketing advertisement (together, the "**Advertisements**") that are the subject of the above complaints ("**Complaints**"). We address both Complaints in this response.<sup>1</sup>

Lion wishes to thank the Complaints Board for the opportunity to respond to these Complaints. Lion prepares all of its advertisements with significant care to ensure that they comply with all legal and advertising standards. This includes ensuring all advertisements have legal approval.

Lion took particular care with the Peace Flotilla campaign. It worked extensively with its advertising consultants, legal team and those involved in the nuclear-free movement and Peace Flotilla campaign to ensure the Advertisements were not only legally compliant, but that they dealt with the subject matter in an accurate, appropriate and respectful manner, as befits the Steinlager brand.

Lion takes the Complaints very seriously and, on receipt of one of the Complaints, made changes to the Advertisements to address the Complainant's concerns. We set out our response to the Complaints below.

#### **The Advertisements – background**

Steinlager has been produced in New Zealand since 1957 and, in that time, has grown to become one of New Zealand's most well-known brands. Steinlager is associated with New Zealanders who have excelled on the local and world stages, including some of New Zealand's most successful sports teams and individuals.

6. The Peace Flotilla campaign forms part of a much broader Steinlager brand refresh which is based around "New Zealand's Finest", a phrase that has and continues to be central to Steinlager's promotional and marketing activity and is designed to champion Steinlager's long-standing association with and connection to New Zealand. Its intention with the Peace Flotilla campaign was, as part of celebrating "New Zealand's Finest", to highlight the key role played by a number of New Zealanders during what was an important part of New Zealand's history. As part of the campaign, Lion wanted to "unite New Zealanders in pride" and to celebrate some of the remarkable achievements undertaken by New Zealanders.

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<sup>1</sup> The response includes the update to Complaint 20/608 dated 11 January 2020.

- 4 In Lion's view, the role some New Zealanders had in helping to prevent nuclear testing in the Pacific is an iconic achievement. In order to showcase New Zealand's contribution in a meaningful and authentic way, Lion engaged with Dan Salmon and Marty Taylor, two members of the 1995 "Peace Flotilla" crew that sailed to the Mururoa Atoll to protest French nuclear testing in the Pacific.

Both Mr Salmon and Mr Taylor were heavily involved throughout the creative and production processes and collaborated with Lion on the Advertisements by providing insight and guidance in order for Lion to portray the Peace Flotilla from their individual perspectives. The Advertisements are a depiction of the event based on the recollections of Mr Salmon and Mr Taylor through their own experiences, which is why the narrative of the Advertisements focus on certain members of the 1995 Peace Flotilla, including Mr Salmon and Mr Taylor, preparing for the trip, and then sailing from Wellington to the Mururoa Atoll.

The authenticity and accuracy of the Peace Flotilla campaign is best demonstrated by comparing the television Advertisement with a video Lion has created that attempts to recreate the Advertisement based solely on real footage taken from Mr Salmon's video camera. This is not publicly available so we enclose it with our response. It is clear from this alone that Lion took caution to ensure that any creative licence was in line with the overall look, feel and narrative of Mr Salmon's and Mr Taylor's experiences.

The well-known song "Go Your Own Way" plays in the background as a testament to the New Zealanders who chose to forge their own path as part of the protests.

The boat in question sails through rough oceans and the sailors read a faxed copy of a newspaper with the headline "Fools or Heroes". As helicopters fly over, the boat unfurls a banner reading "Quittez La Pacifique", and the helicopter pilot comments "They are from New Zealand". The following text is displayed:

Wellington, August 1995.

In 1995, 97 Kiwis risked their lives to help stop nuclear testing in Mururoa.

There have been no nuclear tests in the Pacific since.

Here's to doing things our way.

Steinlager. New Zealand's Finest.

In preparing the Advertisements, Lion took particular care to ensure that the Advertisements were a positive and accurate reflection of how members of the crew recall their experiences as part of the Peace Flotilla campaign. However, Lion acknowledges that this is only a snapshot of the campaign and it has not included, nor attempted to refer to, the critical roles played by other New Zealanders and nationalities. It is not possible to include such detail in television and print advertisements, which is why Lion focused on the recollections and experiences of Mr Salmon and Mr Taylor.

### **The Complaints**

The Complaints allege that the Advertisements breach Guideline 1(h), Principle 1, of the Code for Advertising and Promotion of Alcohol. This Principle provides that:

Alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading.

Further, one of the Complaints considers that the Advertisements have breached Rule 2(b) of the Advertising Standards Code, which provides that:

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

## Response to Complaints

The complainants have raised different, but inter-related, concerns in relation to the Advertisements. To assist the Complaints Board, we have addressed each of these concerns separately.

### *Concern 1: association between Steinlager and the Peace Flotilla in 1995*

The first concern appears to be that the overall impression of the Advertisements is misleading because some consumers may believe that there was some form of association between Steinlager and the Peace Flotilla in 1995.

We have not received any feedback from consumers that they believe there was any sponsorship, approval or association between Steinlager and the Peace Flotilla campaign in 1995. The complainants themselves seem clear that there was no association in 1995 and we therefore do not consider there is any evidence or basis that any reasonable consumers would take such an impression from the Advertisements.

On the contrary, the Advertisements make clear that the overall impression is that Lion is supporting the historical, and successful, efforts that the protestors made in the 1990s and how those protestors exemplified some of the characteristics valued by New Zealanders. The complainant correctly identifies that the purpose of the Advertisements was to "instil pride" in viewers, and we believe we have been successful in this regard.

As outlined above, Steinlager is a well-known New Zealand beer, and the "New Zealand's Finest" campaign highlights examples of Kiwis "going their own way". Lion believes that the involvement of New Zealanders, such as those depicted in the Advertisements, should be acknowledged and celebrated. The focus of the Advertisements is clearly on the actions of the protestors with limited reference to Steinlager only at the end of the Advertisements. Should this aspect of the complaint be upheld, it would create a bizarre situation where brands are unable to reference, depict or celebrate historic events or achievements of New Zealanders unless that brand had a direct involvement with the parties involved at the time of the event. That plainly cannot be the intention of the Advertising Standards Code, and it appears to be inconsistent with previous Complaints Board rulings.<sup>2</sup>

### *Concern 2: the overall impression of the Advertisements is misleading because the Peace Flotilla campaign was not solely responsible for ending all nuclear testing in the Pacific*

Lion accepts and acknowledges that there were a number of factors that played important parts in ending nuclear testing in the Pacific. Critical roles were played by a large number of people and organisations from different countries over an extended period.

By no means did Lion seek to erase the impact of those who opposed nuclear testing in the Pacific, or to re-write history by only focussing on a few New Zealanders involved in the 1995 Peace Flotilla campaign. Lion acknowledges that the history of nuclear testing globally has been long, and there were many contributing factors to the withdrawal of testing in the Pacific. The Advertisements are certainly not an attempt to undermine the contributions of others to the nuclear-free movement. This could not be further from the truth or Lion's intention.

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<sup>2</sup> In a recent decision of the ASA Complaints Board, it was determined that the use of Lord Earnest Rutherford's image to promote Spark's 5G technology was merely a "creative portrayal" and not misleading (Complaint 20/095).

When Lion prepared the Advertisements, its view was that it would not be possible to explain the roles or history of all steps taken to help end nuclear testing in the Pacific. We do not dispute the point made by one of the complainants in relation to the complicated historical background of nuclear testing in the Pacific.

As part of a campaign celebrating “New Zealand’s Finest”, Lion chose to only highlight the involvement of a select group of New Zealanders, and does not feel that there was an expectation or requirement to traverse the complex history of nuclear testing in the Pacific and reference all parties involved. Lion does not believe that any reasonable consumer could expect a print or 60 – 90 second television advertisement to comprehensively cover the nuclear-free protests, and nor did it attempt to do this.

However, given the importance of the matter and the bravery shown by New Zealanders who participated in the Peace Flotilla campaign, Lion wanted to highlight the role played by those New Zealanders, which was undoubtedly highly influential in ending nuclear testing in the Pacific. It therefore sought to help viewers understand the significant efforts and risks taken by focussing solely on the steps taken by the people shown in the Advertisements. This is a common technique in film and advertisements in order to bring events to life, and we consider reasonable consumers will appreciate this.

The on-screen text is prominent and easy to read and deliberately states that the 97 Kiwis “helped” to stop nuclear testing, which demonstrates that there were other people, organisations and factors that contributed to nuclear testing ending in the Pacific.

It is clear that the Advertisements are fiction and a brief summary of the event in question. There is a level of dramatization of the stories of those involved in the protests, and the Advertisements are not intended to be a documentary. Lion also sought to infuse a light heartedness into the Advertisements to demonstrate that these were everyday, real people who were doing extraordinary things.

We do not consider that the reasonable consumer would believe that the on-board protesters unfurled their sails with peace symbols and the helicopters and ship shown in the Advertisements simply turned around and the testing ended immediately. Our view is that the reasonable consumer will appreciate that (i) this is a dramatization; (ii) this is only a brief summary explaining some of the trials and efforts of some of the 97 New Zealanders; and (iii) there will have been further actions and additional contributions from others to end nuclear testing. As noted above, it is made clear that the actions of the 97 New Zealanders “helped” to end nuclear testing, so it will be evident to all viewers that other groups and individuals were involved in the wider protest movement. However, the efforts of the 97 New Zealanders did help to end the nuclear testing in the Pacific, which is the focus of the Advertisements and is not in dispute.

We respectfully submit that the Advertisements do not influence a consumer's perception or recollection of New Zealand's nuclear-free history or the Peace Flotilla campaign. The brief reference to Steinlager and a fleeting image of a Steinlager bottle does not mislead or deceive consumers into thinking that the product was an influential part of the Peace Flotilla campaign, rather it shows that Steinlager supports the efforts taken by the protestors. It also demonstrates the efforts Lion sought to take to ensure the focus of the Advertisements was on the telling of Mr Salmon's and Mr Taylor's stories.

As outlined above, we strongly believe that Lion took care to ensure the Advertisements observed a high standard of responsibility.

*Concern 3: factually incorrect statement*

As noted above, Lion sought to focus on the role played by New Zealanders in the Peace Flotilla campaign and highlight their role in helping to end nuclear testing in the Pacific.

We appreciate that one of the complainants noted in its initial Complaint that there was a risk of confusion that the original Advertisements gave the impression that the nuclear tests ended directly after the Peace Flotilla campaign. As the complainant subsequently identified, additional wording was included in the television Advertisement to remove any risk of confusion around when testing formally ended by stating that there was no further testing in the Pacific since 1996. The Advertisement containing the old wording is no longer available on any medium. As the complainant has identified this and updated the Complaints Board, we do not consider it necessary to address this concern further. The complainant's other concern is addressed above. However, please let us know if the Complaints Board requires further information or submissions in this regard.

As we trust is evident from the steps taken in preparing the Advertisements and in responding to the Complaints, Lion has taken this matter very seriously. Lion has considered the Complaints in detail, however, it remains of the view that the Advertisements are compliant with the ASA's Codes and New Zealand law. If the Complaints Board requires any further information, we would be happy to provide this on an urgent basis.

### **Appendix 3**

#### **RESPONSE FROM COMMERCIAL APPROVALS BUREAU**

Steinlager is recognised worldwide as a fine New Zealand lager. Their logo is Steinlager, New Zealand's finest". Since the 1980's the company has been heavily involved in sponsorship of sports, in particular rugby and yachting.

A campaign for Steinlager has been produced which depict New Zealanders rising to a challenge and in their own way having a major impact on the world.

This particular story relates to a determined group of New Zealanders who formed a flotilla and sailed their small yachts into the Pacific in an effort to stop the French testing their Nuclear weapons. Their bravery and subsequent achievements in halting the testing united the country and to this day there has been no further testing in the Pacific.

New Zealand's Nuclear-free stance is recognised worldwide and this promotion proudly reminds us of those countrymen who made such a courageous stance. It is a merely a celebration of their success in making the world a safer place.

There appears no reason to uphold the one complaint.