

COMPLAINT NUMBER	21/250
ADVERTISER	Lion
ADVERTISEMENT	Speights, Facebook
DATE OF MEETING	8 June 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Speights Facebook advertisement. The Board said the advertisement was not likely to encourage excessive consumption by suggesting it was OK to have a beer at an appropriate time or at the end of the working day. The Complaints Board said the advertisement had met the high standard required of alcohol advertising.

Advertisement

The Facebook advertisement for Speights was posted at 2pm and shows a can of Speights beer with the text "It's 5 o'clock somewhere."

Summary of the Complaint

The Complainant was concerned the advertisement promotes frequent consumption of alcohol.

Issues Raised:

- Social Responsibility
- Responsible consumption of alcohol
- Alcohol as an enhancement

Summary of the Advertiser's Response

The Advertiser said "It's 5 o'clock somewhere is a common expression and would be well known to an adult audience on the age-gated site. The reference to 5 o'clock is historically associated with the end of the working day and a humorous reference to enjoying a drink to mark the end of work even if it is not yet 5pm. In times of more flexible work environments this humour will be appreciated by many. The Advertiser provides examples of similar marketing strategies using this expression.

Relevant ASA Codes of Practice

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

ALCOHOL ADVERTISING AND PROMOTION CODE

Principle 1: Alcohol Advertising and Promotion must be prepared and placed with a high standard of social responsibility to consumers and society.

Rule 1(c) Alcohol consumption Alcohol Advertising and Promotion must demonstrate responsibility and low-risk Alcohol consumption.

Rule 1(d) Alcohol effects Alcohol Advertising and Promotion must not portray or suggest that the effects of consuming Alcohol can improve or enhance a situation or any personal attributes.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 20/368, which was Upheld.

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

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

Decision 20/368 concerned a Facebook advertisement for Nitro Vodka which suggested drinking at any time during the COVID-19 lockdown period. Two Complainants considered the advertisement promoted excessive drinking.

The majority of the Complaints Board said the advertisement did encourage irresponsible or immoderate drinking at any time of the day during COVID-19 lockdown. The majority of the Board also said the image of the clock made up of bottles of RTD vodka could be interpreted as a challenge to binge drink. The advertisement had not observed the high standard of social responsibility required for alcohol advertising. The complaint was therefore in breach of Principle 1, Principle 2 and Guidelines 1(a) and 2(b) of Code for Advertising and Promotion of Alcohol which was in place at that time.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the new Alcohol Advertising and Promotion Code because the advertisement was posted after April 2021. 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, which in this case is:
 - Context: The Kiwi culture of having a drink at the end of the working day
 - Medium: Facebook post
 - Audience: Adult Facebook followers
 - Product: Speights' beer

Consumer Takeout

For some members of the Complaints Board, the likely consumer takeout of the advertisement was that it is acceptable to have a drink because it is 5 o'clock somewhere in the world.

For other members of the Board, the reference to 5 o'clock was linked to the end of the working day, whenever that might be, given the change to the traditional working day facilitated by technology and flexible working arrangements. Therefore, the likely consumer takeout for those members was it was acceptable to have a drink at the end of the workday whatever time of day that is.

Is the advertisement demonstrating responsibility and low risk alcohol consumption?

The Complaints Board said the advertisement did not portray or encourage the irresponsible or excessive consumption of alcohol. The Board said the advertisement showed a single can of beer and did not suggest drinking more than one serving. The Complaints Board said it was not uncommon for people to have a drink at the end of the working day.

The Complaints Board noted the Advertiser had posted the original message on Facebook on Tuesday 4 May at 2 o'clock in the afternoon. The Complaints Board agreed the timing of the post and when consumers would likely have viewed it did not suggest the Advertiser's intent was to encourage consumers to drink at an inappropriate time. The advertisement did therefore demonstrate responsibility and low risk alcohol consumption.

The Complaints Board said the advertisement was not in breach of Rule 1(c) of the Alcohol Advertising and Promotion Code.

Does the advertisement portray or suggest that the effects of consuming alcohol can improve or enhance a situation?

The Complaints Board said the advertisement did not suggest it was necessary to have a beer at the end of the day, but rather that it was OK to have one. The Board said there was no suggestion made in the advertisement that alcohol could improve or enhance a situation.

The Complaints Board said the advertisement was not in breach of Rule 1(d) of the Alcohol Advertising and Promotion Code.

Has the advertisement been prepared and placed with a high standard of social responsibility?

The Complaints Board unanimously agreed the advertisement was socially responsible regardless of which takeout consumers were likely to interpret from the advertisement. The Board said the audience would be age-appropriate consumers who were already aware of the Speights product.

The Complaints Board ruled the advertisement had been prepared and placed with the high standard of social responsibility required of alcohol advertising and was not in breach of Principle 1 or Rules 1(c) or 1(d) of the Alcohol Advertising and Promotion Code.

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. 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

The advertising contains the phrase "It's 5 o'clock somewhere" which promotes rapid, heavy, or frequent consumption of alcohol, in this instance, frequent.

Appendix 2

RESPONSE FROM ADVERTISER, LION

Lion Speight's Digital Marketing – Complaint 21/250

1. We act for Lion NZ Limited ("**Lion**") in relation to Lion's Speight's digital marketing advertisement posted on Facebook on 4 May 2021 ("**Advertisement**") that is the subject of the above complaint ("**Complaint**").
2. 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 are legally compliant, appropriate and accurate. As such, Lion takes all complaints received very seriously, and wishes to thank the Complaints Board for the opportunity to respond to this Complaint.
3. We set out Lion's response to the Complaint below.

The Advertisement

4. Speight's is a New Zealand beer that has been produced in Dunedin since 1876 and remains strongly associated with Dunedin and the South. The Speight's Facebook page is often used to promote the brand by posting advertising images and allowing consumers to engage with the brand.
5. On 4 May 2021 at 2 pm, Lion published on the Speight's Facebook page a picture of a single can of Speight's. The photo is captioned "It's 5 o'clock somewhere".¹

The Complaint

6. The Complaint alleges:

The advertising contains the phrase "It's 5 o'clock somewhere" which promotes rapid, heavy or frequent consumption of alcohol, in this instance frequent.

7. The Complaint indirectly references the following section of the Code for Advertising and Promotion of Alcohol ("**Code**"):

Rule 1(c) Alcohol consumption

Alcohol Advertising and Promotion must demonstrate responsibility and low-risk Alcohol consumption.

Guidelines

1. Alcohol Advertising and Promotion must not portray or represent irresponsible, harmful or excessive consumption of Alcohol, for example, but not limited to:

- i. Rapid, heavy or frequent consumption
- ii. Peer pressure to consume
- iii. Refusal of Alcohol is portrayed negatively as weakness
- iv. Drinking games
- v. Serving sizes greater than the recommended standard serving size guidelines
- vi. Daily consumption or regular consumption that is portrayed as healthy or safe

Lion's position

8. Lion's view is that the Advertisement is not in breach of Rule 1(c) of the Code or any other parts of the Code, and there are no credible grounds on which the Complaint can be upheld. We set out the reasons for this below.
9. The expression "it's 5 o'clock somewhere" is a common expression used by consumers and in advertising. The Speight's Facebook page is age-restricted such that only those users with ages of 18 or above would be able to view the Advertisement. Given the audience of the Advertisement, the phrase will be well known and well-understood. In summary:
 - (a) The reference to "5 o'clock" is the time historically associated with the end of the working day.
 - (b) The expression "it's 5 o'clock somewhere" is used humorously to indicate that someone may deserve a drink after a hard day at work, even if it is not after 5 pm. Viewers of the Advertisement will appreciate this humour and the implication that they can have a well deserved drink to mark the end of a working period, even if it is 4 pm, 2 pm on a Friday afternoon or midday on a Saturday afternoon.
 - (c) The reality for many New Zealanders in today's society, as we work in more flexible environments, is that they do not finish the working day at 5 pm, so they will appreciate the humour behind the Advertisement.
 - (d) Similar humorous expressions are commonly used, for example, "it's breakfast time somewhere" for those people who like to eat breakfast at times other than early in the morning.²

10. Lion's position is supported by the use of the expression in other advertising and in pop culture. A number of New Zealand and international businesses or organisations have used the expression in their social media advertising, for example:

(a) PledgeMe, a crowdfunding platform tweeted:³

It's 5 O'Clock somewhere! Well, at least here in NZ it is! Here's another pro #workingfromhome tip from team member Jess. How many sets of #wfh PJs do you have?

Working From Home Tip #2

Change from your work pyjamas into your evening pyjamas before you have a glass of wine.

(b) New Zealand Business, an organisation run by New Zealand's international economic development agency, New Zealand Trade & Enterprise, tweeted:⁴

It's 5 o'clock somewhere! Time to enjoy some New Zealand Sauvignon Blanc for #SauvBlanc Day. But really, can't every day be #SauvBlanc Day?!

(c) [Booking.com](https://www.booking.com), one of the world's leading digital travel companies, tweeted:⁵

It's 5 o'clock somewhere, right? In honor of #WorldCocktailDay, we're sharing some classic cocktails and where they originated from around the world. Cheers!

(d) Kate Spade New York, an international luxury fashion brand, posted on Facebook a picture of one of its handbags next to a cocktail with the caption:⁶

it's five o'clock somewhere

11. None of these advertisements link the expression with excessive or unhealthy drinking, or encourage rapid, heavy or frequent consumption of alcohol, and the Advertisement must be viewed in the context of the audience and how the expression is used in society.

12. Accordingly, there is no basis to find that the Advertisement "promotes rapid, heavy or frequent consumption of alcohol" nor is there any suggestion that the Advertisement is otherwise in breach of any of guidelines 1(ii)-(vi) of Rule 1(c) in the Code. If anything, the Advertisement conjures up an image of a person having a nice, cold drink at a slow pace as they relax following a hard day at work. This is supported by:

- (a) the Advertisement depicting a single can of beer so as to ensure there is no possibility that the Advertisement is construed as encouraging excessive or frequent drinking;
- (b) the post being made at 2 pm, which is an appropriate time that a responsible adult may finish work for the day or have an alcoholic beverage – there is nothing irresponsible or untoward with someone having a drink in the afternoon or early evening.

13. As we trust is evident from its response to the Complaint, Lion takes this matter very seriously. Lion has considered the Complaint in detail and remains of the view that the Advertisement does not encourage rapid, heavy or frequent consumption of alcohol, and that it is compliant with the ASA's Codes and general community standards.
14. If the Complaints Board requires any further information, Lion is happy to provide this on an urgent basis.

1 This post is available to view at <https://www.facebook.com/SpeightsNZ/posts/1015936392> 7151774.

2 See, for example, <https://www.amazon.com/ITS-ALWAYS-BREAKFAST-TIME-SOMEWHERE/dp/B004BHOXP6>; [https://www.nytimes.com/2011/01/27/business/media/27adco.h tml](https://www.nytimes.com/2011/01/27/business/media/27adco.html)

3 <https://twitter.com/pledgeme/status/1245561633520451584>

4 https://twitter.com/NZ_Global/status/591653906628943872

5 <https://twitter.com/bookingcom/status/1392910018010394625>

6 [https://www.facebook.com/katespadeny/photos/a.103288883985/10161290684733986/? tn=%2CO*](https://www.facebook.com/katespadeny/photos/a.103288883985/10161290684733986/?tn=%2CO*)