

<b>COMPLAINT NUMBER</b>	21/309
<b>COMPLAINT ON BEHALF OF</b>	Alcohol Healthwatch
<b>ADVERTISER</b>	Lion NZ/Highlanders
<b>ADVERTISEMENT</b>	Sponsorship Speight's Highlanders - Clothing, Stadium Signage, Facebook
<b>DATE OF MEETING</b>	24 August 2021
<b>OUTCOME</b>	Settled in Part / Not Upheld in Part No Further Action Required

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

The Complaints Board settled part of the complaint about images on the Highlanders' Facebook page showing children with Highlanders' players with Speight's branding present as the images had been removed and an undertaking received to ensure this does not occur again in the future. The Complaints Board did not uphold three aspects of a complaint about the sponsorship advertisements. The Complaints Board said the Advertiser's logo on the team jersey was less than the 15% coverage of the jersey specified in the alcohol code in the context of the overall sponsorship rules. The Board said that within the context of the entire environment viewed by audiences at the stadium, the field advertising was brief and subordinate. The Board said the two Facebook posts of programme content were not alcohol sponsorship advertising. The use of the Highlanders jersey in the videos was not in breach of the Codes.

### **Advertisements**

The Complaints Board considered the Speight's Highlanders' team jersey, Speight's signage featured around the Forsyth Barr Stadium and a range of Facebook postings on the Speight's Highlanders' Facebook page.

### **Summary of the Complaint**

The Complainant was concerned about sponsorship advertising connected to the Speight's Highlanders' rugby team. The Chair of the Complaints Board issued a preliminary decision on procedural matters laying out the components of the complaint the ASA did not have jurisdiction to consider. The Chair accepted three elements of the complaint for the Complaints Board to consider. The Preliminary Decision is in Appendix 2.

The Chair ruled the ASA had jurisdiction to consider the following advertising.

- The team jersey
- Speight's advertising in the Forsyth Barr Stadium
- Advertising directed at minors using heroes of the young and placed in unrestricted areas.

### **Issue Raised:**

- Alcohol Sponsorship advertising

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

The Advertiser provided an analysis of the team jersey and examples of how this was in keeping with the size and position of other teams' sponsors and within the guidelines of the

ASA codes. The Advertiser said the screenshots provided by the Complainant were not in the context of how the advertising is viewed by the consumer. The Advertiser compared the Speight's advertising at the stadium with other advertisers sharing the space. The Advertiser questioned the ASA's jurisdiction over broadcast programme content. The Advertiser confirmed that posts on the Speight's Highlanders' Facebook page showing children at events had been removed. The Advertiser provided a supplementary response detailing audience demographics present at Highlanders' games at Forsyth Barr Stadium.

### **Relevant ASA Codes of Practice**

The Chair noted that the complaint was received on 24 May 2021 and related to material on the Highlanders' Facebook page posted between 16 January and 15 May 2021. The Chair confirmed that the ASA was in transition from the Code for Advertising and Promotion of Alcohol and the new Alcohol Advertising and Promotion Code.

The Chair noted the new Alcohol Advertising and Promotion Code was effective for new advertisements from 1 April 2021 and all advertisements from 1 July 2021. The definition of a 'new' advertisement is one which was conceived and created after the new code was released and first used after 1 April 2021

Information about which Codes would be applied to which advertisements is set out in the Preliminary Decision and detailed in the Complaints Board Deliberation below.

The Chair directed the Complaints Board, in the first instance, to consider the complaint with reference to the following codes and rules:

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

**Principle 4:** Sponsorship Advertisements shall clearly and primarily promote the sponsored activity, team or individual. The sponsor, the sponsorship and items incidental to them, may be featured only in a subordinate manner.

**Guideline 4 (a):** Shall not contain a sales message.

**Guideline 4 (b):** Shall not show a product or product packaging.

**Guideline 4 (c):** Shall not imitate or use any parts of product advertisements from any media.

**Guideline 4 (d):** Shall not portray consumption of alcohol.

**Guideline 4 (e):** Shall only briefly and in a subordinate way mention or portray the sponsor's name and/or brand name and/or logo orally and/or visually.

### **Guidance Notes**

iv Principle 4, Guideline 4(e) requires that the advertisement "only briefly and in a subordinate way mention the sponsor's name / and or brand name and /or logo". In practical terms, this has been interpreted as being approximately 15% of the advertising space / time available.

v It will not always be possible to apply a proportion of space rule as described above and consideration will be given to the overall look and feel of the material and whether the advertisement is promoting the event or product. This is most likely to apply where a sponsor has naming rights to an event, including the use of the brand in an event or activity name (e.g. Brand X New Zealand Golf Open).

## ALCOHOL ADVERTISING AND PROMOTION CODE

**Principle 3:** Alcohol Sponsorship Advertising and Promotion must target Adults and primarily promote the Sponsored Party.

### **Rule 3 (a) Targeting Adults**

Alcohol Sponsorship Advertising and Promotion must target Adult audiences.

#### **Guidelines**

1. Sponsored Parties who are also individuals, groups or teams, including, but not limited to, cultural and sporting heroes or icons, celebrities and social media influencers that are currently popular with Minors and/or have particular appeal to Minors, may be used in Alcohol Sponsorship Advertising and Promotion providing all the requirements set out in Rules 3 (a) and (b) of this Code are met.
2. To ensure Alcohol Sponsorship Advertising and Promotion targets Adults, Alcohol Advertisers should not engage in Sponsorship Agreements unless Adults are at least 80% or more of the estimated participants or spectators.
3. Alcohol Advertisers may only permit Sponsored Parties to feature Alcohol branding on adult-size clothing and accessories.
4. Alcohol Advertisers must not feature Alcohol branding on any promotional material that is primarily appealing to, or is likely to be distributed to, Minors.
5. Placement
 

Advertisers must be able to demonstrate they have used appropriate tools and/or have taken care in evaluating audience composition to select and target Adult audiences prior to the placement of Alcohol Sponsorship Advertising and Promotion.

Alcohol Sponsorship Advertising and Promotion may be placed in:

  - i. age-restricted media when appropriate tools are used to select Adult audiences and/or access is restricted to Adults only; or
  - ii. any media only when recognised industry standard audience composition data are available and 80% or more of the expected average audience are Adults; or
  - iii. places/premises only when the expected average audience are or are likely to be 80% or more Adults.

### **Rule 3 (b) Content**

Alcohol Sponsorship Advertising and Promotion must only feature the Alcohol Advertiser and the sponsorship in a subordinate manner.

#### **Guidelines**

1. Alcohol Sponsorship Advertising and Promotion must not
  - i. contain a direct or implied sales message;
  - ii. show Alcohol or the product label or packaging;
  - iii. imitate or use any parts of Alcohol Advertising or Promotion from any media;
  - iv. portray consumption of Alcohol;
  - v. state or imply therapeutic, health benefit, mental or physical enhancement or weight claims;
  - vi. include Minors;
  - vii. include women who are visibly pregnant or seen breastfeeding.

The Chair directed the Complaints Board to consider the following codes and rules where advertisement examples provided in the complaint, for consideration under the Code for Advertising and Promotion of Alcohol, do not meet the definition of Sponsorship Advertisement.

### **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 (a)** Alcohol advertising and promotions in non-restricted areas shall not use or refer to identifiable heroes or heroines of the young.

The Chair directed the Complaints Board to consider the following codes and rules where advertisement examples provided in the complaint, for consideration under the Alcohol Advertising and Promotion Code, do not meet the definition of Alcohol Sponsorship Advertising and Promotion.

### **ALCOHOL ADVERTISING AND PROMOTION CODE**

**Principle 1: Social Responsibility**

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

**Rule 1 (a) Targeting Adults – Timing and placement**

The timing and placement of Alcohol Advertising and Promotion must target Adult audiences.

**Rule 1 (b) Targeting Adults – Content**

The content of Alcohol Advertising and Promotion must target Adults.

### **Preliminary Matter**

The complaint received from Alcohol Healthwatch included 37 examples to support the issues raised in the complaint about all advertising associated with the Speight's sponsorship of the Highlanders. The Chair of the Complaints Board noted the complexity of the complaint, the current transition period between the alcohol codes and matters raised in the complaint that are outside the jurisdiction of the Advertising Standards Authority (ASA). This resulted in the Preliminary Decision on Procedural Matters – see Appendix 2.

### **Matters not considered by the Complaints Board**

- All advertisements – The Chair confirmed the ASA does not consider blanket complaints about “all advertisements” from an advertising campaign
- The nature of the sponsorship agreement between Speight's and the Highlanders. The Chair confirmed the ASA does not have the jurisdiction to consider commercial sponsorship agreements.
- The Speight's Highlanders' name. The Chair confirmed the ASA does not have jurisdiction over names, including the 'Speight's Highlanders' team name and the name of the 'Forsyth Barr South Stand'- the 'Speight's Stand'.

- Broadcast programme content. The Chair confirmed the ASA does not have jurisdiction over broadcast programme content including the broadcast or live streaming of games.
- Highlanders team events. The Chair confirmed the ASA does not have jurisdiction over actual events, for example an opportunity to meet the players. However, the Codes do apply to advertising for and at the events including clothing and signage.

### **Matters to be considered by the Complaints Board**

- The team jersey
- Speight's advertising in the Forsyth Barr Stadium
- Advertising directed at minors using heroes of the young and placed in unrestricted areas.

### **Complaints Board Discussion**

The Complaints Board took into account that when applying the Code for Advertising and Promotion of Alcohol and the Alcohol Advertising and Promotion Code, to both Alcohol Advertising and Promotion and Alcohol Sponsorship Advertising and Promotion, a high standard of social responsibility is required.

#### **Issue 1. The Team Jersey**

##### *The Complaint*

The Complaints Board noted the Complainant was concerned the size and placement of the sponsor's name, brand name and logo is portrayed on the team jersey in a manner that is not brief and is not subordinate. The Board noted the Complainant provided a range of examples to demonstrate the size and position of the Speight's logo on the Highlanders' team jersey – (A1- A17 of the Complaint submitted – see Appendix 1).

##### *What is the advertisement under consideration?*

The Complaints Board noted the Chair had determined in the preliminary decision that the examples A1-A17 all demonstrate how the Speight's name and logo appear on the team jersey. Therefore, the Complaints Board agreed the 'advertisement' under consideration is the whole team jersey wherever it may be seen, including at the stadium watching a live game.

##### *Which of the Advertising Standards Authority's alcohol codes apply?*

The Complaints Board noted the Speight's Highlanders' team jersey first appeared in advertising content prior to 1 April 2021 and the complaint was received 24 May 2021. The Complaints Board agreed the Code for Advertising and Promotion of Alcohol applies to the team jersey advertisement.

##### *Is the likely consumer takeout from the team jersey that it fits the definition of alcohol sponsorship advertisement?*

The Complaints Board noted the definition of alcohol 'sponsorship advertisement' from the Code for Advertising and Promotion of Alcohol is;

**“Definition of ‘sponsorship advertisement’** means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.”

The Complaints Board unanimously agreed the team jersey advertisement met the definition of a sponsorship advertisement and that consumers were likely to understand the Speight's logo on the jersey was in keeping with the sponsorship arrangements for all teams within the Super Rugby competition.

*Does the advertisement comply with Principle 4, Guidelines 4(a) – 4(d) of the Code for Advertising and Promotion of Alcohol?*

The Complaints Board said the advertisement complied with Guidelines 4(a) - 4(d) because it does not contain a sales message, show product or packaging, imitate or use parts of product advertising or portray the consumption of alcohol.

The Complaints Board ruled the advertisement was not in breach of Principle 4 or Guidelines 4(a), 4(b), 4(c) or 4(d) of the Code for Advertising and Promotion of Alcohol.

*Does the advertisement comply with Principle 4, Guideline 4(e) of the Code for Advertising and Promotion of Alcohol which states the advertisement: “Shall only briefly and in a subordinate way mention or portray the sponsor’s name and/or logo.”?*

The Complaints Board said that within the context of the advertisement being considered it could mean “to not be dominant in the space the sponsorship is occurring.”

In assessing this point the Complaints Board referred to the Guidance Notes for interpreting Guideline 4(e) which state:

- iv. Principle 4, Guideline 4(e) requires that the advertisement “only briefly and in a subordinate way mention the sponsor’s name / and or brand name and /or logo”. In practical terms, this has been interpreted as being approximately 15% of the advertising space / time available.
- v. It will not always be possible to apply a proportion of space rule as described above and consideration will be given to the overall look and feel of the material and whether the advertisement is promoting the event or product. This is most likely to apply where a sponsor has naming rights to an event, including the use of the brand in an event or activity name (e.g. Brand X New Zealand Golf Open).

The Complaints Board were in agreement that the Speight’s logo did not take up more than 15% of the entire jersey surface area or even the front of the jersey. The Board said whilst the logo’s placement was front and centre on the jersey, this positioning was in keeping with the principal sponsors of all the teams in the competition. The Complaints Board noted that the jersey had other prominent sponsorship on the back, as well as other sponsorship on the front and sleeves.

The Complaints Board said the advertisement needed to be considered in the context of the overall sponsorship rules. The Board said as alcohol brands are currently permitted to sponsor sports teams, then legitimate sponsorship advertising within the defined position and size parameters prescribed by Rugby NZ and within the guidelines of the Code for Alcohol Advertising and Promotion could not be considered a breach.

The Complaints Board ruled the advertisement was not in breach of Principle 4 or Guideline 4(e) of the Code for Advertising and Promotion of Alcohol.

## **Issue 2. Speight’s advertising in the Forsyth Barr Stadium**

### *The Complaint*

The Complaints Board noted the Complainant was concerned about the prominent placement of Speight’s logos on the field (corner flags, post protectors, slogan and brand iconography in the goal area) and in the Forsyth Barr Stadium (fixed and electronic hoardings) is not brief or subordinate and is characterised by frequent repetition and near constant exposure.

The Board noted the Complainant had provided a range of screen shots from broadcast programme content of Highlanders games or from Sky Sport programme content from the Highlanders' Facebook page as examples to demonstrate the various advertisements (B12-B22 of the Complaint submitted – see Appendix 1).

*What are the advertisements under consideration?*

The Complaints Board noted the Chair had determined in the Preliminary Decision that while the broadcast content was not advertising, the screen-shot examples provided from the video content demonstrate how the advertisements with the Speight's name and logo are displayed to consumers at the Forsyth Barr Stadium when attending a Highlanders game.

The Complaints Board noted that based on the preliminary decision, the advertisements under consideration are all of the following:

1. Goal post protectors (B18, B20, B22)
2. Lower level stand signage (B19)
3. Upper level stand signage (B19)
4. Corner post protector (B20)
5. Field level LED signage (B20, B21)

*Which of the Advertising Standards Authority's alcohol codes apply?*

The Complaints Board noted these advertisements first appeared in the Forsyth Barr Stadium prior to 1 April 2021 and the complaint was received 24 May 2021. The Complaints Board agreed the Code for Advertising and Promotion of Alcohol applies to each of the advertisements it will consider in turn.

*Is the likely consumer takeout from those attending Highlanders games that the stadium advertising fits the definition of alcohol sponsorship advertisement?*

The Complaints Board unanimously agreed the various signage advertisements at the grounds met the definition of sponsorship advertising and that consumers were likely to recognise that the Speight's logos displayed were part of a sponsorship package.

*Do the advertisements comply with Principle 4, Guidelines 4(a) – 4(d) of the Code for Advertising and Promotion of Alcohol?*

The Complaints Board said the advertisements complied with Guidelines 4(a) - 4(d) because they do not contain a sales message, show product or packaging, imitate or use parts of product advertising or portray the consumption of alcohol.

The Complaints Board ruled the advertisements were not in breach of Principle 4 or Guidelines 4(a), 4(b), 4(c) or 4(d) of the Code for Advertising and Promotion of Alcohol.

The Complaints Board then considered each of the advertisements in relation to Principle 4, Guideline 4(e):

**Goal post protectors**

*Do the advertisements portray the sponsor's name in a brief and subordinate way?*

The Complaints Board agreed the goal post protector sponsorship advertisements would be considered brief and subordinate when viewed by an audience within the context of the rugby game. The Complaints Board said the goal post area of the field predominantly became a focus during tries and conversions, at which time the consumer's focus was likely to be on the game rather than the sponsorship message. The Board said the guidance was clear that if an alcohol Advertiser is permitted to sponsor an event, they are entitled to have advertisements displayed around that event.

The Complaints Board ruled the goal post advertisements were not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

### **Lower-level stand signage**

*Do the advertisements portray the sponsor's name in a brief and subordinate way?*

The Complaints Board agreed the Speight's advertisements which form part of the lower-level stand at the Forsyth Barr Stadium would be considered brief and subordinate when viewed by an audience within the context of the rugby game at the stadium. The Complaints Board noted the Advertiser had indicated this was part of a sponsorship deal with Forsyth Barr Stadium rather than the Highlanders. Regardless of this technicality, the Board said the consumer outtake would not differentiate between sponsorship deals. The Complaints Board said the advertising images would not be the dominant focus for the audience when attending the game.

The Complaints Board ruled the lower-level stand advertisements were not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

### **Upper-level stand signage**

*Do the advertisements portray the sponsor's name in a brief and subordinate way?*

The Complaints Board agreed the advertisements which form part of the upper-level stand at the Forsyth Barr Stadium would be considered subordinate when viewed by an audience within the context of the rugby game. As with the previous lower-level advertisements, the advertisements would be brief and subordinate to everything else happening at the stadium.

The Complaints Board ruled the advertisements were not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

### **Corner post protectors**

*Do the advertisements portray the sponsor's name in a brief and subordinate way?*

The Complaints Board agreed the Speight's advertisements which appear on the corner post protectors would be considered brief and subordinate when viewed by an audience within the context of the rugby game. The Complaints Board said this area of the field tends to be the focus when tries are scored and audiences will likely be focussed on the players rather than the corner post messaging.

The Complaints Board ruled the corner post protector advertisements were not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

### **Field level LED signage**

*Does the advertisement portray the sponsor's name in a brief and subordinate way?*

The Complaints Board agreed the Speight's advertisement which appeared on the rotating LED signage would be considered brief and subordinate when viewed by an audience within the context of the rugby game. The Board noted the Advertiser confirmed Speight's only receives a guaranteed 4.5 minutes of LED advertising exposure out of a minimum of 80 minutes per game. The Complaints Board also noted this space was shared with 30 other individual advertisers. The Board said having just under 5% of advertising time in the space was brief and subordinate.

The Complaints Board ruled the LED signage advertisements were not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

The Complaints Board also considered the impact of the field advertising as a whole. The Board noted the Advertiser had confirmed that Speight's Highlanders have a portfolio of 55 other partners and suppliers, including nine other "Major Partners."

The Complaints Board considered that an average consumer sitting in the grounds, taking in the myriad of competing advertising, would be focused on the game. The Board said the size of the stadium and the competing live content that consumers are there to watch would dilute the impact of the sponsorship advertising. While the Board acknowledge Speight's was one of the dominating brands within the stadium from a marketing point of view, the advertising remained subordinate to the actual game.

The Complaints Board said the cumulative effect of the field advertising was subordinate to the game and was not in breach of Principle 4 or Rule 4(e) of the Code for Advertising and Promotion of Alcohol.

### **On-field Speight's logo and tag line "Good on ya mate"**

The Complaints Board considered the advertisement shown in the Complainant's examples (B18, B21, B22) which used the tag line "Good on ya mate"

The Complaints Board noted this tag line is currently used in Speight's alcohol advertisements and as such would not be permitted under the alcohol sponsorship guidelines. The Complaints Board said the Advertiser had confirmed this digital image was not an on-field graphic visible to the audience at the game. The alcohol advertisement only appears as a graphic in the broadcast content. As ruled by the Chair in the Preliminary Decision on Procedural Matters, the ASA does not have jurisdiction over broadcast programme content.

The Complaints Board noted that even if consumers at the game were to see a fleeting image of the superimposed alcohol advertisement while viewing the replay screens in the stadium, the Advertiser had provided audience data information which showed children's tickets to the game accounted for a small fraction of the seating capacity at the Forsyth Barr stadium. This meant the "Good on ya mate" alcohol advertisement met the requirement of targeting an adult audience.

### **Issue 3 (a) Facebook advertising on the Speight's Highlanders page.**

#### *The Complaint*

The Complaints Board noted the Complainant was concerned the Speight's Highlanders advertising is directed at minors, and has strong and evident appeal to minors, in terms of content (clear association with popular sports team) and use of heroes of the young in a variety of settings, none of which are restricted areas.

#### *What are the advertisements under consideration?*

The Complaints Board noted the Complainant provided a range of examples to demonstrate Speight's Highlanders advertising showing minors being associated with alcohol sponsorship on the Highlanders' Facebook page. – (C23- C37 of the Complaint submitted – see Appendix 1).

#### *Which of the Advertising Standards Authority's alcohol codes apply?*

The Complaints Board noted examples C26, C27, C32 and C33 provided by the Complainant were Facebook content posted prior to 1 April 2021 and the complaint was received 24 May 2021. The Complaints Board agreed the Code for Advertising and Promotion of Alcohol applies to these advertisements. The Complaints Board further noted advertisement examples C23, C28, C29, C30, C31, C34, C35, C36 and C37 had been placed on the Highlanders Facebook page after 1 April 2021. The Complaints Board agreed the Alcohol Advertising and Promotion Code applies to these advertisements.

The Complaints Board noted the Advertiser's response which acknowledges the team jersey should not be worn to events where a significant number of minors would be present and the Speight's logo should not feature in advertising for these events. Upon receipt of the complaint

the Advertiser removed the examples quoted above from the Speight's Highlanders Facebook page.

Given the self-regulatory action taken by the Advertiser of removing the posts, and the undertaking to ensure the team jersey with the Speight's logo would not be worn at events with a significant number of minors, nor would the Speight's brand or logo feature in any advertising for such events. the Complaints Board agreed this part of the complaint was considered Settled.

### **Issue 3 (b) Facebook programme content**

The Complaints Board noted the two videos the Complainant raised in its complaint – C24 and C25 had not been removed by the Advertiser.

#### *The Complaint*

The Complaints Board noted the C24 example from the Complainant is a programme promotion for Sky Sport's coverage of a Highlanders vs Reds game. One scene in the thirty second video, starting at the two second mark for one second, shows the Highlanders in their Speight's sponsored jerseys running onto the field holding hands with children. The scene with the children is not the focus of the programme promotion.

The Board also noted the C25 example from the Complainant refers to Sky Sport programme content from Aaron Smith's 'player cam' during a Highlanders vs Crusaders game. One scene in the six-minute thirty-eight seconds video, starting at the six second mark for two seconds, shows the Highlanders in their Speight's sponsored jerseys running onto the field holding hands with children. The scene with the children is not the focus of the programme content.

#### *Is there an advertisement to be considered?*

The Complaints Board noted the Preliminary Decision on Procedural Matters confirmed the ASA does not have jurisdiction over broadcast programme content or over activities and events the Highlanders decide to participate in.

The activity of team members running onto the field with minors was not considered by the Complaints Board to be advertising. The Highlanders have not used images of this activity as part of any advertising example raised in the complaint.

The Complaints Board agreed the only advertisement example visible in screen shot examples C24 and C25 is the team jersey. There is no advertisement example visible in C24 or C25 that demonstrates minors in alcohol sponsorship advertising and promotion or alcohol advertising and promotion. While minors are dressed in Highlanders' jerseys, these jerseys do not include the Speight's brand.

In conclusion, the Complaints Board agreed the Codes and Rules relevant to minors and heroes of the young in alcohol advertising did not apply to examples C24 and C25.

### **Summary**

In summary, the Complaints Board confirmed it applied a high standard of social responsibility in assessing compliance with the relevant sponsorship advertising and promotion principles and rules under both the Code for Advertising and Promotion of Alcohol and the Alcohol Advertising and Promotion Code.

**Issue 1 – Team jersey –** The Complaints Board said the advertisement was not in Breach of the Code for Advertising and Promotion of Alcohol – Not Upheld.

**Issue 2** –Advertising in the Forsyth Barr Stadium - The Complaints Board said the advertisements were not in Breach of the Code for Advertising and Promotion of Alcohol – Not Upheld.

**Issue 3 (a)** – Facebook sponsorship advertising featuring children. – The Complaints Board said the complaints were settled.

**Issue 3 (b)** – Facebook programme content – The Complaints Board said the rules in the Code for Alcohol Advertising and Promotion relevant to minors and heroes of the young in sponsorship advertising or alcohol advertising and promotion did not apply to example C25. The Complaints Board said the rules in the Alcohol Advertising and Promotion Code relevant to minors and individuals and teams currently popular with minors in alcohol sponsorship advertising and promotion or alcohol advertising and promotion did not apply to example C24.

#### **Outcome**

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

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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

## APPENDICES

1. Complaint
  2. Preliminary Decision on Procedural Matters
  3. Response from Advertiser
  4. Supplementary Response from Advertiser
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### Appendix 1

#### COMPLAINT, ALCOHOL HEALTHWATCH

##### Subject: ASA Complaint – Speight’s Highlanders

This complaint relates to all alcohol advertisements and/or alcohol sponsorship advertisements associated with the Speight’s sponsorship of the Speight’s Highlanders Super Rugby team in 2021. On 3rd February 2021, The Highlanders announced that they will be known as the Speight’s Highlanders and that the Speight’s brand would appear on the front of the team kit:

<http://thehighlanders.co.nz/media-centre/news/1055-introducing-the-speight-s-highlanders-for-2021>

Please refer to attached images and hyperlinks as evidence that the sponsor’s name, brand name, and logo is being portrayed in a manner that is not brief and is not subordinate (refer Appendix, Figures A1-B22). Please also find attached images and hyperlinks that demonstrate alcohol advertising having strong and evident appeal to minors (refer Appendix, Figures C23-C37), being placed not only at stadia, but also in schools, at child-focussed events, and being worn prominently by identifiable heroes of the young, including members of the Super Rugby franchise the Speight’s Highlanders, and members of the Speight’s Highlanders who are also All Blacks. The attached images are illustrative and not exhaustive. As stated above, this complaint relates to all alcohol advertisements and/or alcohol sponsorship advertisements associated with the Speight’s sponsorship of the Speight’s Highlanders Super Rugby team in 2021.

A sponsorship advertisement is defined (in the Code for Advertising and Promotion of Alcohol) as meaning *an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.*

#### Principle 4 of the Code for Advertising and Promotion of Alcohol

Principle 4 of the Code for Advertising and Promotion of Alcohol states:

*Sponsorship advertisements shall clearly and primarily promote the sponsored activity, team or individual. The sponsor, the sponsorship and items incidental to them, may be featured only in a subordinate manner.*

#### 1) Guideline 4(e)

*Guideline 4(e): Shall only briefly and in a subordinate way mention or portray the sponsor’s name and/or brand name and/or logo orally and/or visually.*

We submit that the size and placement of the Speight’s logo on the Speight’s Highlanders team kit features in a manner that is not at all subordinate. Rather we characterise the size and placement of the Speight’s logo as prominent. We submit that there is no other placement available or feasible on the playing and training jerseys that could be more prominent.

We further submit that the naming of the sports team as the *Speight's* Highlanders is neither a brief nor subordinate mention or portrayal of the sponsor's name.

We submit that there is nothing incidental or subordinate about the featuring of Speight's as the sponsor of the team (the sponsor name appears before the franchise name), or the prominence of the sponsor's brand logo on the front of team kit.

We further submit that in combination with the prominent placement of the Speight's logo on team kit, prominent placement of Speight's logos on the field (corner flags, post protectors, slogan and brand iconography in goal area) and in the Forsyth Barr Stadium (fixed and electronic hoardings, naming of the south stand as the Speight's Stand etc.), that the sponsor's name, brand name, and logo is mentioned and portrayed in a manner that could not be characterised as brief or subordinate.

The visual portrayal of the Speight's brand name and logo is not brief, but is characterised by frequent repetition and near constant exposure.

We therefore submit that the Speight's sponsorship of the Highlanders is in breach of Guideline 4(e) of the Code for Advertising and Promotion of Alcohol. Therefore, we consider that these advertisements can be considered as alcohol advertisements, subject to Principles 1-3 of the Code for Advertising and Promotion of Alcohol.

## **2) Guideline 4(g)**

*Guideline 4(g): Alcohol producers, distributors or retailers should not engage in sponsorship where those under 18 years of age are likely to comprise more than 25% of the participants, or spectators.*

Speight's Highlanders matches are broadcast on Sky Television, reaching a large audience, thousands of whom are believed to be children aged under 18 years of age. However, we understand that children are unlikely to have comprised more than 25% of the broadcast audience.

Whilst we submit that children under 18 years of age are unlikely to have comprised more than 25% of participants or spectators of the televised matches, nevertheless thousands of children will be exposed to the alcohol advertisements and alcohol sponsorship advertisements through televised broadcasts. As for child-focussed activities the Speight's Highlanders have engaged in (e.g. community training sessions, skills and drills, rip rugby roadshows, autograph signing sessions, pregame Kidszones featuring "giveaways, face painting and lots of fun activities", and school visits), we submit that children under 18 years of age are likely to comprise more than 25% of the participants, or spectators.

We submit that the Speight's sponsorship of the Highlanders is in breach of Guideline 4(g) of the Code for Advertising and Promotion of Alcohol.

## **Principle 3 of the Code for Advertising and Promotion of Alcohol**

Principle 3 of the Code for Advertising and Promotion of Alcohol 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.*

*Guideline 3(a): Alcohol advertising and promotions in non-restricted areas shall not use or refer to identifiable heroes or heroines of the young.*

*(Guidance notes: Other representative sports teams may also be heroes of the young, for example Super 15 Rugby franchises have been identified as such.*

*Note, where the teams / individuals / groups pro-actively connect with under 18's through children's merchandise, special training sessions for children to attend, and other initiatives with a youth focus – then the likelihood of an issue re heroes of the young is increased.)*

We submit that these Speight's alcohol advertisements are being directed at minors, and have strong and evident appeal to minors, in terms of content (clear association with popular sports team) and placement (advertisements placed in and around Forsyth Barr Stadium, on team kit, community sporting venues, social media, television broadcasts, and in one particular case on heroes of the young visiting Green Island School, serving breakfast to minors while prominently advertising Speight's on the front of their shirts).

The examples appended show Speight's advertisements and promotions placed on and around heroes of the young in a variety of settings, none of which are restricted areas.

Of particular concern is when players are attending and participating in events that have been set up for children, for example community training (skills and drills, rip rugby roadshows) sessions aimed at minors, autograph signing sessions, school visits, pregame Kidszones (featuring "giveaways, face painting and lots of fun activities"), and opportunities to run out on to the playing field with their heroes who are wearing prominent Speight's advertisements on their playing jerseys. All of these aspects of the Speight's Highlanders regular activities are specifically aimed at children. Having professional athletes as heroes and role models for children is a positive thing but they should not be a medium for alcohol advertisements or prominent alcohol sponsorship advertisements.

We submit that the Speight's sponsorship of the Highlanders is in breach of Principle 3 and Guideline 3(a) of the Code for Advertising and Promotion of Alcohol.

*Guideline 3 (d): Alcohol Advertisements shall not be shown on television between 6.00 am and 8.30 pm.*

*Guideline 3 (e): Broadcasters shall avoid the impression that alcohol promotion is dominating the viewing or listening period when broadcasting alcohol advertisements, including alcohol sponsorship advertisements taking into account the context of the programme.*

Speight's brand advertising is visually prominent throughout the televised matches, on the Highlanders' playing jersey, in and around the field of play, and in and around Forsyth Barr Stadium. With the exception of one afternoon fixture, match broadcasts commenced at 7:05pm and concluded between 8:45pm and 9:00pm. During match broadcasts, alcohol advertisements are visually prominent during the watershed hours prior to 8:30pm. During match broadcasts, particularly from Forsyth Barr Stadium, alcohol advertisements are dominating the viewing period.

We submit that the Speight's sponsorship of the Highlanders is in breach of Guideline 3(d) and 3(e) of the Code for Advertising and Promotion of Alcohol.

### **Principle 1 of the Code for Advertising and Promotion of Alcohol**

Principle 1 of the Code for Advertising and Promotion of Alcohol states:

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

We submit that these alcohol advertisements and alcohol sponsorship advertisements do not observe a high standard of social responsibility. They are not brief. They are not subordinate. They are directed at minors. They have strong and evident appeal to minors in particular. They use identifiable heroes of the young in non-restricted areas, including in at least one school. They are shown on broadcast television between 6:00am and 8:30pm. They dominate the viewing period of the broadcast. They do not observe a high standard of social

responsibility. They are seen by thousands of children viewing the broadcasts each week the Speight's Highlanders take the field.

### **Principle 1 of the Advertising Standards Code**

Principle 1 of the Advertising Standards Code states:

*Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.*

We submit that these advertisements have not been prepared or placed with a due sense of social responsibility to consumers or society, due to the advertisements' prominent, repeated placement, and the large numbers of children exposed to the advertisements on televised broadcasts, in and around the field of play, in and around the Forsyth Barr Stadium, at community training sessions, during team school visits, and during other child focussed events as detailed in the appendix. We submit that these advertisements are in breach of Principle 1 of the Advertising Standards Code.

We submit that these alcohol advertisements and alcohol sponsorship advertisements are in breach of Principle 4, Guideline 4(e), Guideline 4(g), Principle 3, Guideline 3(a), Guideline 3(d), Guideline 3(e), and Principle 1 of the Code for Advertising and Promotion of Alcohol. We submit that these advertisements are in breach of Principle 1 of the Advertising Standards Code.

We ask that the Complaints Board consider whether these alcohol advertisements and alcohol sponsorship advertisements breach the Principles and Guidelines of the Code for Advertising and Promotion of Alcohol and the Advertising Standards Code as referred to above.

## APPENDIX Prominence of Speight's branding

### A. On player/staff apparel:



Figure A1. Source: <https://www.facebook.com/HighlandersFB/videos/4243751245652128>



Figure A2. Source: <https://www.facebook.com/HighlandersFB/videos/2147539492048364>



Figure A3. Source: <https://www.facebook.com/HighlandersFB/videos/211748410637145>



Figure A4. Source: <https://www.facebook.com/HighlandersFB/videos/1004246823443970>



Figure A5. Source: <https://www.facebook.com/HighlandersFB/videos/1004246823443970>

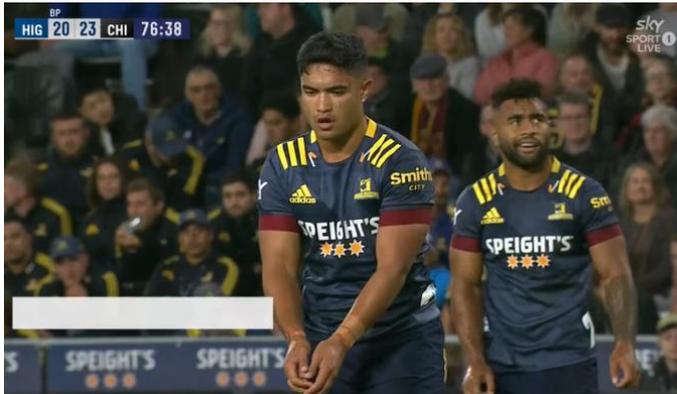


Figure A7. Source: <https://www.facebook.com/HighlandersFB/videos/976159716253517>



Figure A8. Source: <https://www.facebook.com/HighlandersFB/videos/281412873463013>



Figure A9. Source: <https://www.facebook.com/HighlandersFB/videos/4125078234181128>



Figure A10. Source: <https://www.facebook.com/HighlandersFB/videos/2939811446276369>



Figure A11. Source: <https://www.facebook.com/HighlandersFB/videos/2958421207702688>



Figure A12. Source: <https://www.facebook.com/HighlandersFB/videos/4192717837446654>



Figure A13. Source: <https://www.facebook.com/HighlandersFB/videos/4192717837446654>



Figure A14. Source: <https://www.facebook.com/HighlandersFB/videos/743659582979391>



Figure A15. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159445692882249>



Figure A16. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/1015944569202249>



Figure A17. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159320526032249>

B. On and around the field of play



Figure B18. Source: <https://www.facebook.com/HighlandersFB/videos/211748410637145>





Figure B19. Source: <https://www.facebook.com/HighlandersFB/videos/1004246823443970>



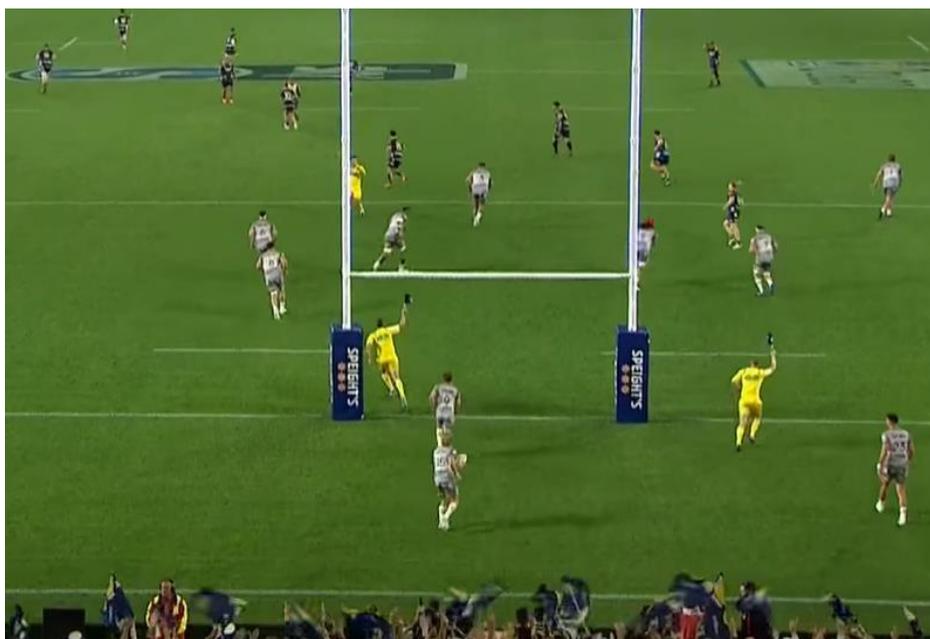


Figure B20. Source: <https://www.facebook.com/HighlandersFB/videos/171769468133381/>

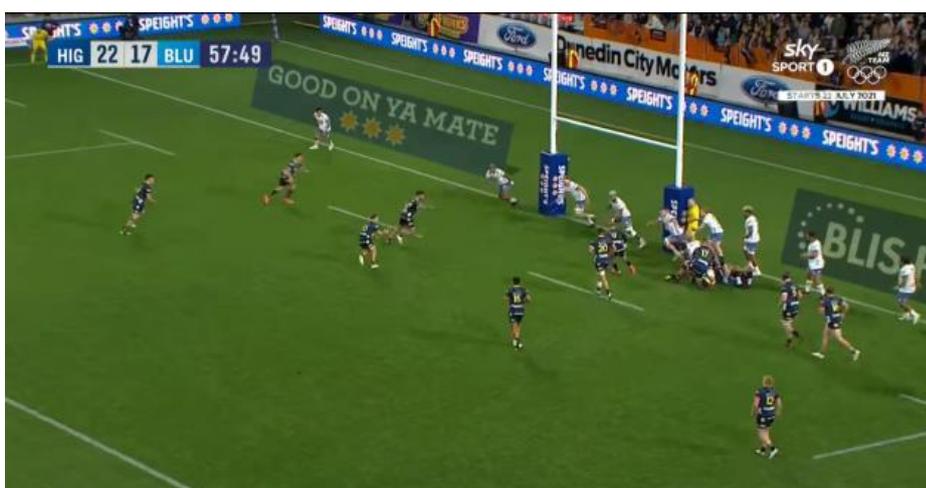




Figure B21. Source: <https://www.facebook.com/HighlandersFB/videos/281412873463013>





Figure B22. Source: <https://www.facebook.com/HighlandersFB/videos/743659582979391>

### Proximity and appeal to minors

#### *C. Appeal to children*



Figure C23. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159445692022249>



Figure C24. Source: <https://www.facebook.com/HighlandersFB/videos/4192717837446654>



Figure C25. Source: <https://www.facebook.com/HighlandersFB/videos/1004246823443970>



Figure C26. Source: <https://www.facebook.com/385405572248/videos/318796129457255>



Figure C27. Source: <https://www.facebook.com/HighlandersFB/videos/1076217466192277>



Figure C28. Source: <https://www.facebook.com/HighlandersFB/videos/1912534968898414>



Figure C29. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159445924492249>



Figure C30. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159445921062249>



Figure C31. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159445692882249>



Figure C32. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159320526032249>



Figure C33. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159397453677249>

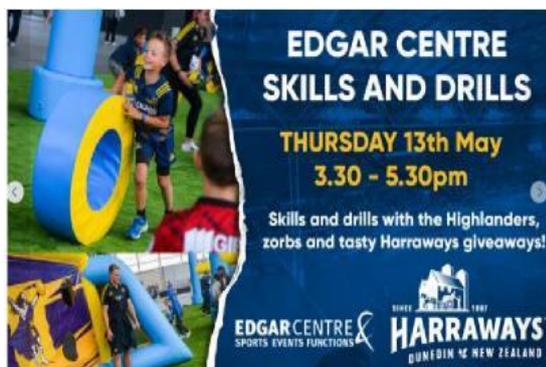


Figure C34. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159506061532249>



Figure C35. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159464944522249>



Figure C36. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159452626917249>



Figure C37. Source:

<https://www.facebook.com/HighlandersFB/photos/a.500346877248/10159435035557249>

## Appendix 2

### PRELIMINARY DECISION OF PROCEDURAL MATTERS

#### PRELIMINARY DECISION ON PROCEDURAL MATTERS

**Complaint:** Alcohol Healthwatch lodged a complaint which stated: "This complaint relates to all alcohol advertisements and/or alcohol sponsorship advertisements associated with the Speight's sponsorship of the Speight's Highlanders Super Rugby team in 2021."

The complaint detailed a wide-range of issues including the sponsorship agreement, the team name, signage, clothing and events with minors and included 37 different examples of possible code breaches.

**The Chair** noted the complexity of the complaint and the current transition period between the Code for Advertising and Promotion of Alcohol and the new Alcohol Advertising and Promotion Code. In light of this, the Chair decided to make a preliminary decision on procedural matters to ensure the Complaints Board and the parties focus on matters that are within the Board's jurisdiction and the correct codes are applied.

The Chair noted the Complainant requested that all alcohol advertisements and/or alcohol sponsorship advertisements associated with the Speight's sponsorship of the Speight's Highlanders Super Rugby team in 2021 be considered as part of the complaint. The Chair confirmed the Advertising Standards Authority (ASA) does not consider complaints about 'all advertisements' from an advertising campaign or in relation to any particular sponsorship agreement.

The ASA process applies to identified alcohol advertisements/promotion or sponsorship advertisements/promotion. More than one alcohol advertisement/promotion example may be considered together where the issue(s) raised are the same. The decision will apply to advertisements/promotions that meet the same criteria as those adjudicated on by the Board.

#### **Matters in the complaints outside the ASA's jurisdiction:**

The Chair ruled the following matters are outside the ASA's jurisdiction.

##### *Commercial Sponsorship Contracts*

The Chair confirmed the ASA does not have the jurisdiction to consider commercial sponsorship agreements. While information on audience composition is included in Code guidance as a matter for parties to consider when looking for sponsors, the ASA's jurisdiction is the alcohol advertising and promotion and alcohol sponsorship advertising and promotion on the sponsorship, not the agreement or contract.

##### *Naming rights*

The Chair confirmed the ASA does not have jurisdiction over names, including the 'Speight's Highlanders' team name and the name of the Forsyth Barr South Stand 'Speight's Stand'. The ASA Codes apply to how names are used in alcohol advertising and promotion.

##### *Broadcast programme content*

The Chair confirmed the ASA does not have jurisdiction over broadcast programme content including the broadcast or live streaming of games. The Codes apply to advertising in breaks in advance of, during or after these games. Speight's branding may be viewed during the broadcast of the games, but this programme content is subject to the Broadcasting Standards Authority Broadcasting Standards (see Standard 7 Alcohol).

##### *Events*

The Chair confirmed the ASA does not have jurisdiction over actual events, for example an opportunity to meet the players. However, the Codes do apply to advertising for and at the events including clothing and signage.

#### **Application of the Codes:**

The complaints will not be considered against the Advertising Standards Code, Principle 1, because the high standard in both the Code for Advertising and Promotion of Alcohol and the Alcohol Advertising and Promotion Code is the benchmark, not the due standard in the Advertising Standards Code.

In order to ensure all matters within the jurisdiction of the ASA and raised in the complaint are considered, the Secretariat has used the examples as numbered in the complaint (A1 – C37). These numbered examples are used to set out below which Alcohol Code will be applied to which advertisement/example.

1. Examples that meet the sponsorship definitions will be assessed in the first instance for compliance with sponsorship principles and rules in the relevant code.
2. Examples that do not meet the sponsorship definitions are assessed for compliance with the alcohol advertising and promotion principles and rules in the relevant code.

Examples	Dates placed on Highlanders Facebook Page	Issue(s) raised in the complaint
A1 – A17 Images of the Speight's Highlanders team shirt	3 Feb – 15 May	A range of examples that demonstrate the size and placement of the sponsor's name, brand name, and logo is being portrayed on the team shirt in a manner that is not brief and is not subordinate.
<p><b>Which Code applies?</b></p> <p><b>Code for Advertising and Promotion of Alcohol</b> because this team shirt appeared in advertising and promotion prior to 1 April 2021.</p> <p><b>Definition of 'sponsorship advertisement'</b> means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.</p> <p><b>Guideline 4 (e)</b></p> <p>Shall only briefly and in a subordinate way mention or portray the sponsor's name and/or brand name and/or logo orally and/or visually.</p> <p><b>Guidance Notes</b></p> <p>iv. Principle 4, Guideline 4(e) requires that the advertisement "only briefly and in a subordinate way mention the sponsor's name / and or brand name and /or logo". In practical terms, this has been interpreted as being approximately 15% of the advertising space / time available.</p> <p>v. It will not always be possible to apply a proportion of space rule as described above and consideration will be given to the overall look and feel of the material and whether the advertisement is promoting the event or product. This is most likely to apply where a sponsor has naming rights to an event, including the use of the brand in an event or activity name (e.g. Brand X New Zealand Golf Open).</p>		

Examples	Dates placed on Highlanders Facebook Page	Issue(s) raised in the complaint
B18 on field behind goal posts	26 Feb – 15 May	A range of examples that demonstrate the prominent placement of Speight's logos on the field (corner flags, post protectors, slogan and brand

<p>B19 hoardings around the stand</p> <p>B20 Corner post and goal post protectors</p> <p>B21 hoardings at field level</p> <p>B22 goal post protectors</p>		<p>iconography in goal area) and in the Forsyth Barr Stadium (fixed and electronic hoardings is not brief or subordinate but is characterised by frequent repetition and near constant exposure.</p>
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#### Which Code applies?

**Code for Advertising and Promotion of Alcohol** because each of these advertisements appeared around the stadium and on the field prior to 1 April 2021.

**Definition of ‘sponsorship advertisement’** means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.

*Note: The Complaints Board will first determine if these examples are sponsorship advertisements. If they do not meet the definition of ‘sponsorship advertisement’ they will be considered as ‘alcohol advertising and promotion’*

“**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. This includes media releases, branded merchandise, competitions, word of mouth marketing, adver gaming, product displays and sampling, but does not include a sponsorship advertisement or an advertisement in which reference to or the depiction of alcohol or alcohol packaging or an alcohol outlet is incidental to its purpose. 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 will consider these advertisements in relation to Principles 1 and Principle 3, Guideline 3 (a) of the Code for Advertising and Promotion of Alcohol.**

Examples	Dates placed on Highlanders Facebook Page	Issue(s) raised in the complaint
C25	5 Mar 16 Jan	Examples of advertising that is directed at minors, and has strong and evident appeal to minors, in terms of content (clear association with popular sports

C26	2 Feb	team) and use of heroes of the young in a variety of settings, none of which are restricted areas.
C32	24 Mar	
C33	1 Feb	
C27		

### Which Code applies?

**Code for Advertising and Promotion of Alcohol** because these advertisements were placed on the Highlanders Facebook page prior to 1 April 2021.

**Definition of ‘sponsorship advertisement’** means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.

### Guideline 4 (f)

May be broadcast at any time except during programmes intended particularly for minors.

### Guideline 4 (g)

Alcohol producers, distributors or retailers should not engage in sponsorship where those under 18 years of age are likely to comprise more than 25% of the participants, or spectators.

### Guideline 4 (h)

Sponsors shall not require or permit sponsored parties to feature alcohol branding on children’s size replica sports kit or on any promotional material distributed to minors.

### Guidance Notes

- i. Alcohol companies can sponsor teams / events / individuals and activities.
- vi. Teams and individuals who may otherwise be considered heroes of the young and prevented from being included in alcohol advertisements, may be included in sponsorship advertisements as long as the requirements set out in the Guidelines (4a to 4e) are met.
- viii. References to heroes of the young in alcohol advertising (defined separately to sponsorship advertising) are specifically dealt with in a separate Guidance Note for Principle 3 above.

*Note: The Complaints Board will first determine if these examples are sponsorship advertisements. If they do not meet the definition of ‘sponsorship advertisement’ they will be considered as ‘alcohol advertising and promotion’*

**“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. This includes media releases, branded merchandise, competitions, word of mouth marketing, adver gaming, product displays and sampling, but does not include a sponsorship advertisement or an advertisement in which reference to or the depiction of alcohol or alcohol packaging or an alcohol outlet is incidental to its purpose. 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 will consider these advertisements in relation to Principles 1 and Principle 3, Guideline 3 (a) of the Code for Advertising and Promotion of Alcohol.**

<b>Examples</b>	<b>Dates placed on Highlanders Facebook Page</b>	<b>Issue(s) raised in the complaint</b>
C23	12 Apr	Examples of advertising that is directed at minors, and has strong and evident appeal to minors, in terms of content (clear association with popular sports team) and use of heroes of the young in a variety of settings, none of which are restricted areas.
C24	12 May	
C31	12 Apr	
C35	20 Apr	
C36	15 Apr	
C37	8 Apr	
C29	12 Apr	
C30	12 Apr	
C28	9 Apr	
C34	9 May	

#### **Which Code applies?**

The ***Alcohol Advertising and Promotion Code*** applies because these advertisements were placed on the Highlanders Facebook page for the first time after 1 April 2021.

**Definition of ‘Alcohol Sponsorship Advertising and Promotion’** means any message the content of which is controlled directly or indirectly by the Alcohol Advertiser, expressed in any language and communicated in any medium with the purpose of promoting the Sponsored Party.

#### **PRINCIPLE 3: ALCOHOL SPONSORSHIP ADVERTISING AND PROMOTION**

Alcohol Sponsorship Advertising and Promotion must target Adults and primarily promote the Sponsored Party.

##### **Rule 3 (a) Targeting Adults**

Alcohol Sponsorship Advertising and Promotion must target Adult audiences.

- Sponsored Parties who are also individuals, groups or teams, including, but not limited to, cultural and sporting heroes or icons, celebrities and social media influencers that are currently popular\* with Minors and/or have particular appeal to\* Minors, may be used in Alcohol Sponsorship Advertising and Promotion providing all the requirements set out in Rules 3 (a) and (b) of this Code are met.

*\* Consumer research by Alcohol Advertisers may be appropriate to determine who or what is ‘currently popular’ or has ‘particular appeal’.*

- To ensure Alcohol Sponsorship Advertising and Promotion targets Adults, Alcohol Advertisers should not engage in Sponsorship Agreements unless Adults are at least 80% or more of the estimated participants or spectators.

8. Alcohol Advertisers may only permit Sponsored Parties to feature Alcohol branding on adult-size clothing and accessories.
9. Alcohol Advertisers must not feature Alcohol branding on any promotional material that is primarily appealing to, or is likely to be distributed to, Minors.

#### 10. Placement

Advertisers must be able to demonstrate they have used appropriate tools and/or have taken care in evaluating audience composition to select and target Adult audiences prior to the placement of Alcohol Sponsorship Advertising and Promotion.

Alcohol Sponsorship Advertising and Promotion may be placed in:

- iv. age-restricted media when appropriate tools are used to select Adult audiences and/or access is restricted to Adults only; or
- v. any media only when recognised industry standard audience composition data are available and 80% or more of the expected average audience are Adults; or
- vi. places/premises only when the expected average audience are or are likely to be 80% or more Adults.

#### 11. Out of home

In addition to Guideline 5 above, Advertisers must not place Alcohol Sponsorship Advertising and Promotion on fixed sites within a 300-metre sightline of the main entrance to a primary, intermediate or secondary school.

*Note: The Complaints Board will first determine if these examples are alcohol sponsorship advertisements. If they do not meet the definition of 'alcohol sponsorship advertising and promotion' they will be considered as 'alcohol advertising and promotion'*

**Alcohol Advertising and Promotion** means any message, including naming, labelling and packaging, the content of which is controlled directly or indirectly by the Alcohol Advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed and is for the purpose of promoting Alcohol:

- products or brands, including the use of the colour scheme, aural, visual or linguistic device or motif associated with the product or brand; or
- producers, importers, distributors, wholesalers, licensing trusts, licensed clubs, retailers or premises.

For the avoidance of doubt, this definition:

- applies to an advertisement that includes a reference to licensed premises only when the intent of the advertisement is to promote the consumption of Alcohol;
- does not apply to Alcohol Sponsorship Advertising and Promotion;
- does not apply to an advertisement in which reference to or the depiction of Alcohol or Alcohol packaging or an Alcohol outlet is incidental to its purpose.

**The Complaints Board will consider these advertisements in relation to Principle 1, Rules 1 (a) and 1 (b) of the Alcohol Advertising and Promotion Code**

The next steps in the process to consider the complaint are:

1. This decision will be distributed to parties and the Advertisers: Lion and the Highlanders will be asked to respond to the matters within jurisdiction and under the Codes set out in the table above.
2. All documentation relevant to the complaint will then be placed before the Complaints Board for determination and parties will be notified of the outcome in due course.

### Appendix 3

#### RESPONSE FROM ADVERTISER, LION NZ SPEIGHT'S HIGHLANDERS – COMPLAINT 21/309

1. Thank you for providing the preliminary decision on procedural matters ("**Preliminary Decision**") in relation to the above complaint from Alcohol Healthwatch ("**Complaint**").
2. The Preliminary Decision requires Lion NZ Limited ("**Lion**") to respond to the Complaint in respect of the matters within the Complaints Board's jurisdiction – with specific reference to the applicable code, principles and guidelines/rules. Lion appreciates this guidance and it responds accordingly below.
3. As noted in its initial response, Lion wishes to make it clear that any sponsorship it engages in is carefully considered from a legal perspective. In circumstances where such sponsorship may involve any sports teams, Lion is particularly mindful of its obligations under the Code for Advertising and Promotion of Alcohol ("**CAPA**") or Alcohol Advertising and Promotion Code ("**AAPC**"). Lion ensures that any form of sponsorship has legal approval, as well as approval under the Liquor Advertising & Promotion Pre-Vetting Service ("**LAPPS**") administered by the Association of New Zealand Advertisers, and any sponsorship advertisements are compliant with the CAPA or AAPC. This was the position with the current sponsorship of the Speight's Highlanders ("**Sponsorship**"), which has been in place for over five months.
4. Lion has considered the Complaint and informed the Speight's Highlanders of Lion's response. We understand that the Speight's Highlanders support Lion's response to the Complaint, which is set out below. The response outlines the context of the Sponsorship and Lion's response to the specific issues identified in the Preliminary Decision.

#### **Context of the Sponsorship**

##### *The Sponsorship*

5. Speight's has been partnered with the Highlanders since the inception of Super Rugby 25 years ago. On 3 February 2021, the Highlanders announced that Speight's and the Highlanders had agreed to a four-year extension of their partnership.<sup>1</sup> Under the Sponsorship agreement, the Highlanders would be known as the Speight's Highlanders and the Speight's brand would appear on the front of the playing and training jerseys in 2021.

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<sup>1</sup> Speight's Highlanders "Introducing the Speight's Highlanders for 2021" (press release, 3 February 2021).

6. This form of sponsorship is not new or unique to New Zealand. The Hurricanes had the Tui Golden Lager brand on the front of their home jerseys during the 2016 Investec Super Rugby season.<sup>2</sup> An example of Hurricanes players wearing the home jersey with the Tui Golden Lager brand from the press release is **attached** and marked as Annexure 1.
7. This is merely one of a number of examples of alcohol brands sponsoring sports team and having their logos featured on the respective sports jerseys, in New Zealand and overseas. Recent examples are **attached** and marked as Annexure 2. In addition, we note that the Woodstock Bourbon logo has featured on the sleeve of the Vodafone Warriors' jersey for a number of years.
8. It is common for professional sports teams or sports governing organisations to post footage of games involving sports teams (and thereby showing sports jerseys with alcohol sponsorship) on their websites, social media pages or apps.
9. The commercial agreements for the Sponsorship in question are confidential, but they deal with matters such as:
  - a) naming rights of the team;
  - b) where and how the brand features on the front or back of jerseys, shorts or other apparel including replica jerseys; and
  - c) in-venue LED signage and associated logo placement at and during the Speight's Highlanders' home games.
10. Lion agreed to be the naming sponsor of the team and to have the Speight's logo on the front of the team's jerseys for the 2021 season. Lion has no control over where the logo is placed on the jerseys – the space and dimensions are prescribed by New Zealand Rugby and, as explained further below, this is the standard position for sponsors' logos on sports, and particularly rugby, jerseys. This can also be seen in the images in Annexure 2.
11. There is clearly no intent for Speight's to appeal to minors. This is not consistent with Lion's values and how it operates as a business. One area where Lion had discretion in relation to the Sponsorship is the use of the Speight's logo on *replica* jerseys. Lion agreed and, included within its sponsorship agreement with the Highlanders, that the Speight's logo would not feature on any children's replica jerseys in accordance with the CAPA and AAPC. This is evident from some of the images annexed to the Complaint.
12. Further, the social media launch of the Sponsorship referred to and referenced in the Complaint deliberately avoided any use of or reference to heroes of the young. Lion deliberately used Tony Brown, an ex-Highlanders player and the current coach who has been retired for many years, so as to avoid any appeal to minors. In addition, Mr Brown was never shown holding or consuming any Speight's product to avoid any implication that the announcement was, or could be perceived, as alcohol advertising.

#### *Use of Speight's at sports stadiums*

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<sup>2</sup> Hurricanes "Tui Re-Commit for four more years with the Hurricanes" (press release, 10 March 2016).

13. Importantly, many of the examples collated in the Complaint focus on the prominence of references to "Speight's" at the Speight's Highlanders' home games at a given point in time. As set out below, this is at odds with the intent and express wording of principle 4 of the CAPA and principle 3 of the AAPC, and the sponsorship advertisements must be considered in light of the overall look and feel, including all other advertising space present and visible as part of the relevant Speight's Highlanders' games, including through broadcast and at the venue.
14. We understand that the Speight's brand also appears in Forsyth Barr Stadium. This is part of the Speight's sponsorship of Forsyth Barr Stadium, which is separate to the Sponsorship. A number of the images that are referenced in the Complaint show permanent signs associated with Speight's sponsorship of Forsyth Barr Stadium, for example, signage that forms part of the Speight's Stand at Forsyth Barr Stadium. For the reasons outlined below, we do not consider that the sponsorship of Forsyth Barr Stadium should be taken into account when assessing the Complaint.

*Display of jerseys at public events*

15. It was only on receipt of the Complaint that Lion became aware that the team jerseys had been worn to events and functions where a significant number of minors would be present. We understand that this was an oversight, and it is one that has now been remedied. Lion and the Speight's Highlanders agreed immediately that representatives of the team would not wear any apparel featuring the Speight's brand or logo to any such events. Nor will the Speight's brand or logo feature in any advertising for such events.
16. The events referred to in the Complaint also need to be considered in the context of the extensive efforts the Speight's Highlanders, as a franchise, supports its local community. For example, representatives from the franchise, including players, conduct over 1,200 hours of community service initiatives in any given year. This is something that the franchise and the players value. As one would expect, some of these are carried out in conjunction with the Speight's Highlanders' various sponsors. The events that are referred to in the Complaint are only a small proportion of the wider community work that the Speight's Highlanders engage in, which can include supporting sports clubs and local charitable causes.
17. To isolate a select few occasions where there has been unintentional exposure of Speight's branding on the Speight's Highlanders' casualwear while the franchise (and their squad of 38 players) are doing such extensive community work does not:
- a) appropriately characterise what the franchise is trying to achieve while serving its community; or
  - b) provide sufficient context to the Authority on how the Sponsorship works in practice and may be seen by minors.
18. We request that the Complaint is considered in this context. We turn now to the specific examples that the Complaints Board has identified from the Complaint. Due to the wide range of examples, we address them in categories that we have identified, with reference to the issues raised and the applicable code, principles and guidelines/rules under each of those categories.

### Footage from the Speight's Highlanders' games

19. We refer to the following examples: A3, A4 (which is the same as C25), A5, A6, A7, A8, A9, A10, A14 ("**Footage Examples**").
20. The Footage Examples are screenshots taken from videos that feature footage from the Speight's Highlanders' games. As a preliminary point, where examples from the Complaint are screenshots taken from videos, the still images cannot be considered in isolation because that is not how a consumer would view the videos. Each of the videos must be considered as a whole, in the way that a consumer would see them.
21. The Preliminary Decision confirms that the Advertising Standards Authority ("**ASA**") does not have jurisdiction over broadcast programme content. Any appearance of the Speight's brand in footage from the Speight's Highlanders' games is subject to the Broadcasting Standards Authority Broadcasting Standards. Accordingly and respectfully, the ASA does not have jurisdiction over the Footage Examples because the Speight's brand only appears as part of the footage from the live broadcasts.
22. As a matter of general principle, if merely posting footage of a game on a platform such as Facebook makes that footage become an "advertisement" and therefore under the jurisdiction of the ASA, then this will raise numerous issues for sports teams, sports governing bodies and sponsors, especially when such footage is intended to be governed by the Broadcasting Standards Authority.
23. Further, footage from the live broadcasts is not controlled by Lion or the Speight's Highlanders. Sky Sport controls the material of the Footage Examples. We note that the definition of "advertising and advertisement(s)" in the Advertising Standards Code is:
 

...any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.
24. Accordingly, Lion considers that the Footage Examples are *not* advertisements for Speight's because they are not controlled directly or indirectly by Lion.
25. Even if the ASA has jurisdiction over the Footage Examples, and even if the Footage Examples are advertisements for Speight's, our view is that they would not breach the applicable code for the appearance of the Speight's logo on the Speight's Highlanders' jerseys. We note that the Preliminary Decision determines that the CAPA applies to the Footage Examples in relation to the issue raised as to whether the Speight's brand on the Speight's Highlanders' jerseys is brief and subordinate.
26. Principle 4 of the CAPA provides:

Sponsorship advertisements shall clearly and primarily promote the sponsored activity, team or individual. The sponsor, the sponsorship and items incidental to them may be featured only in a subordinate manner.

27. "Sponsorship advertisement" is defined in the CAPA as follows:

**"Sponsorship advertisement"** means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity, or event. Any advertisement referring to a sponsorship that does not comply with Guidelines 4(a) to 4(e) of Principle 4 is deemed to be an alcohol advertisement.

28. Guideline 4(e) of the CAPA provides:

[Sponsorship advertisements] Shall only briefly and in a subordinate way mention or portray the sponsor's name and/or brand name and/or logo orally and/or visually.

29. The videos in which the Footage Examples appear broadly consist of footage from the Speight's Highlanders' games. The Footage Examples only appear for brief snippets of the videos and the Speight's brand on the players' jerseys are not visible or identifiable for most of the videos. For example, figure A3 appears in a close-up shot that lasts around four seconds in a 252-second highlights video. This is less than 2% of the whole length of the video – where the clear focus is on the game, rather than any jerseys or sponsors.

30. We do not consider that viewing still images taken from footage of a game provides the correct context for how a typical consumer will view the video. As an illustration, Annexure 3 contains still images taken from footage included in one of the videos that form part of the Complaint. None of these images contain Speight's branding.

31. Accordingly, Lion's position is that the videos in which the Footage Examples appear are compliant with guideline 4(e) of the CAPA, in light of the guidance note that states:

Principle 4, Guideline 4(e) requires that the advertisement "only briefly and in a subordinate way mention the sponsor's name / and or brand name and / or logo". In practical terms, this has been interpreted as being approximately 15% of the advertising space / time available.

32. For further context, while Speight's is the "Principal Partner" of the Highlanders, the team also has a portfolio of 55 other partners and suppliers, nine of which are classed as "Major Partners" including the University of Otago, Pulse Energy, 2 Degrees, Probiotics and Coresteel. The playing jersey is only one part of the total advertising space and, as mentioned, should not be viewed in isolation.
33. Regardless, even when the Footage Examples and the Speight's Highlanders' jerseys are viewed in isolation, Lion considers that the placement and size of the Speight's brand are compliant with guideline 4(e) of the CAPA. The Speight's brand occupies approximately 290 cm<sup>2</sup> of space on the Speight's Highlanders' playing jersey, as measured on the size of an average player in the Speight's Highlanders. This is approximately 3% of the total space available on the playing jersey and is significantly less than the maximum allowable space permitted under applicable World Rugby regulations which is set at 360 cm<sup>2</sup>. Even accepting that viewers may only see, for example, a third of a player's jersey at any given time, the Speight's logo would still only make up as much as 9% of total visible space seen by viewers. This does not take into account that the placement of the brand should be assessed in the context of the full playing kit (eg the shorts feature sponsors' logos), which would mean the brand makes up an even smaller percentage.
34. Further, the jersey must be considered in light of the overall look and feel of the material and whether the advertisement is promoting the event or product, in accordance with the following guidance note:

It will not always be possible to apply a proportion of space rule [to determine whether the advertisement mentions the sponsor's name and/or brand name and/or logo in a brief and subordinate way] and consideration will be given to the overall look and feel of the material and whether the advertisement is promoting the event or product. This is most likely to apply where a sponsor has naming rights to an event or activity name (e.g. Brand X New Zealand Golf Open).

35. The *placement* of the Speight's brand on the playing and training jerseys of the Speight's Highlanders is the standard (and prescribed) placement for the principal sponsor on Sky Super Rugby team jerseys, and most other sports jerseys. Examples of the Blues, Gallagher Chiefs, Crusaders, Speight's Highlanders and Hurricanes' home jerseys are **attached** and marked as Annexure 4.
36. The *size* of the Speight's brand on the playing and training jerseys of the Speight's Highlanders adheres to the New Zealand Rugby Union's prescribed dimensions for marks on Sky Super Rugby team jerseys. This is consistent with the size of the principal partner's brand on the Blues, Gallagher Chiefs, Crusaders and Hurricanes' home jerseys in Annexure 4.
37. Accordingly, should the ASA have jurisdiction over the Footage Examples, the Speight's brand on the Speight's Highlanders' jerseys in the Footage Examples is compliant with guideline 4(e) of the CAPA.

### **Content from Sky Sport**

38. We refer to the following examples: A11, A12 (which is the same as C24) and A13 ("**Sky Sport Content**").
39. Similar to the Footage Examples, Lion's view is that the ASA does not have jurisdiction over the Sky Sport Content because the Sky Sport Content is part of broadcast programme content from Sky Sport. Any appearance of the Speight's brand in the Sky Sport Content is subject to the Broadcasting Standards Authority Broadcasting Standards.
40. The Sky Sport Content consists of screenshots taken from Sky Sport promotional videos on certain programmes. As noted above, where examples from the Complaint are screenshots taken from videos, the still images cannot be considered in isolation because that is not how a consumer would view the videos. Each of the videos must be considered as a whole, in the way that a consumer would see them.
41. Further, Lion and the Speight's Highlanders do not have any control over the material of the Sky Sport Content. Therefore, Lion considers that the Sky Sport Content does not meet the definition of "advertising and advertisement(s)" in the Advertising Standards Code, as set out above at paragraph 22. Accordingly, the examples are *not* advertisements for Speight's because they are not controlled directly or indirectly by Lion.
42. Even if the ASA has jurisdiction over the Sky Sport Content, and even if the examples are advertisements, the Sky Sport Content would not breach the applicable code for the appearance of the Speight's logo on the Speight's Highlanders' jerseys. We note that the Sky Sport Content is treated in the same way as the Footage Examples in the Preliminary Decision – it determines that the CAPA applies to the Sky Sport Content in relation to the issue as to whether the Speight's brand on the Speight's Highlanders' jerseys is brief and subordinate.

43. The Sky Sport Content only appears for brief snippets of the Sky Sport promotional videos. Like the Footage Examples, the Speight's brand on the jerseys is not visible or identifiable for most of the videos. Clearly, the videos primarily promote the programmes on Sky Sport, the sponsored team or an event. We do not consider that viewing still images taken from a promotional video provides the correct context for how a typical consumer will view the video.
44. Regardless, even when the Sky Sport Content and the Speight's Highlanders' jerseys are viewed in isolation, Lion considers that the placement and size of the Speight's brand are compliant with guideline 4(e) of the CAPA. This is for the same reasons as set out at paragraphs 32 to 37.

### **Speight's Highlanders videos**

45. We refer to the following examples: A1 and A2 ("**Highlanders Examples**").
46. Similar to the Footage Examples and Sky Sport Content, the Highlanders Examples are screenshots taken from videos. Each of the videos must be considered as a whole, in the way that a consumer would see them.
47. Unlike the previous examples discussed above, Lion considers that the videos in which the Highlanders Examples appear *are* sponsorship advertisements for the purposes of the CAPA (which is the applicable code). This is because the material is controlled directly by the Speight's Highlanders.
48. The issue raised in relation to the Highlanders Examples, as identified in the Preliminary Decision, is whether the Speight's brand on the Speight's Highlanders' jerseys is brief and subordinate. The relevant principle, definition and guideline, as identified in the Preliminary Decision, are set out at paragraphs 26 to 28. We also note the following guidance note:

It will not always be possible to apply a proportion of space rule [to determine whether the advertisement mentions the sponsor's name and/or brand name and/or logo in a brief and subordinate way] and consideration will be given to the overall look and feel of the material and whether the advertisement is promoting the event or product. This is most likely to apply where a sponsor has naming rights to an event or activity name (e.g. Brand X New Zealand Golf Open).

49. In our view, the Highlanders Examples are compliant with guideline 4(e) of the CAPA because:

- a) figure A1 comprises of two screenshots taken from a video launching the Sponsorship on 3 February 2021. The video from which figure A1 is taken primarily promotes the sponsored team. The purpose of the video is to announce the principal sponsor of the Highlanders for 2021. This is consistent with the intent of the CAPA, which is to expressly permit sponsorship of teams and events by alcohol companies and facilitate such sponsorship in a responsible manner. Given that the CAPA expressly permits sponsorship by alcohol companies, the intent of the CAPA cannot be to rule out any form of sponsorship announcement if the sponsor is an alcohol company;
- b) figure A2 is a screenshot taken from a video that promotes the Speight's Highlanders in relation to a game against the Crusaders. We consider that the appearance of the Speight's brand on the players' jerseys is incidental to Speight's being the principal sponsor and is subordinate to the team and event being promoted; and
- c) of the reasons set out at paragraph 32 to 37.

#### **Further footage from the Speight's Highlanders' games**

50. We refer to the following examples: B18, B19, B20, B21 and B22 ("**Field Examples**").

51. These are further screenshots taken from videos that feature footage from the Speight's Highlanders' games. As set out at paragraphs 20 to 24 in relation to the Footage Examples, Lion considers that the ASA does not have jurisdiction over the Field Examples because the Speight's brand only appears as part of the footage from live broadcasts and the Field Examples are *not* advertisements for Speight's because they are not controlled directly or indirectly by Lion.

52. We note that the Preliminary Decision determines that the CAPA applies to the Field Examples. The Preliminary Decision states that the Complaints Board will first determine whether the Field Examples are sponsorship advertisements, and if they do not meet the definition, they will be considered as alcohol advertising and promotion.

53. Even if the ASA has jurisdiction over the Field Examples, and even if the Field Examples are advertisements for Speight's, there would be no breach of the CAPA. The issue raised in the Complaint is whether the appearance of the Speight's brand on the field and in Forsyth Barr Stadium is brief or subordinate. If such appearance is not brief or subordinate (which Lion denies), the Field Examples would not meet guideline 4(e) and would be deemed alcohol advertising and promotion.

54. In our view, the Field Examples *are* compliant with guideline 4(e) because:

- a) By necessity, the examples of where the Speight's brand is featured on the field and in Forsyth Barr Stadium must be viewed with reference to both the total exposure of brands that are part of the Highlanders' sponsorship portfolio as well as the overall context of watching the Speight's Highlanders, be that by attendance at the venue or viewing through live broadcasts. While the Field Examples are specific instances where the Speight's logo is featured most prominently on advertising hoardings at the ground, these cannot be viewed in isolation. We do not consider that viewing still images taken from footage of a game provides the correct context for how a typical consumer will view the video. As noted above, Annexure 3 contains still images taken from footage included in one of the videos that form part of the Complaint. None of these images contain Speight's branding.
- b) In assessing what portion of total advertising space features the Speight's logo, it is relevant that viewers of the Speight's Highlanders' games are subject to a wide range of advertising and visual prompts at the game and on television in addition to the Speight's logo. Any consumer viewing the game will be seeing the match itself, both teams and officials, the views of Forsyth Barr Stadium (with its fixed advertising) and other sponsors and brands (including other sponsors of the Speight's Highlanders, sponsors of the Sky Super Rugby competition and sponsors of the stadium). These other sponsors feature significantly in Forsyth Barr Stadium and on the other team and officials. By way of example, the LED and in-goal signage that is referenced as part of the Complaint is scrolling signage such that, for the majority of the game, the Speight's logo is not featured.
- c) As a brand, Speight's receives a guaranteed 4.5 minutes of LED advertising exposure out of a minimum of 80 minutes of broadcast time per game. This is just over 5% of total LED advertising time. This advertising space is shared with more than 30 other individual advertisers with some (such as Sky Sport and Adidas) receiving 9 x 30-second slots throughout the broadcast.
- d) As noted above, Speight's Highlanders have a portfolio of 55 other partners and suppliers, including nine other "Major Partners".

55. On this basis, if the ASA has jurisdiction over the Field Examples, and the Field Examples are advertisements for Speight's, the Field Examples would be sponsorship advertisements under the CAPA. Accordingly, principles 1 to 3 of the CAPA do not apply.

#### **Photos at the Speight's Highlanders' games**

56. We refer to the following examples: A15 (which is the same as C31), A16 (which is the same as C23), C29 and C30 ("**Game Photos**").

57. Lion acknowledges that the Game Photos include minors with players wearing jerseys or with fixed hoardings that feature the Speight's brand. Lion and the Speight's Highlanders have agreed to remove the Game Photos from the Speight's Highlanders' Facebook page, along with other examples which are addressed below, as there is no intent for Speight's to appeal to minors. In this regard, we consider that the issues raised with the Game Photos have been addressed.

### **Photos and videos at non-game events**

58. We refer to the following examples: C26, C27, C28, A17 (which is the same as C32), C33, C34, C35, C36 and C37 ("**Other Event Content**").
59. As explained above, steps have been taken to ensure that jerseys and other apparel featuring the Speight's logo will not be worn or promoted at events likely to be popular with, or targeted at, minors. Nor will the Speight's brand or logo feature in any advertising for such events. Accordingly, Lion and the Speight's Highlanders have agreed to remove the Other Event Content from the Speight's Highlanders' Facebook page. In this regard, we consider that the issues raised with the Other Event Content have also been addressed.

### **Conclusion**

60. As we trust is evident from its responses to the Complaint, Lion takes this matter very seriously. It has considered the Complaint carefully and it remains of the view that the Sponsorship, and the advertisements relating to the Sponsorship, are compliant with the principles and guidelines/rules of the CAPA and AAPC. It considers that the Sponsorship is consistent with the intent of the CAPA and AAPC, which is to expressly permit sponsorship of teams and events, provided the requirements of the applicable code are complied with.
61. If Lion is not permitted to undertake the Sponsorship in the manner in which it has done (with the exception of the Speight's logo featuring on players' jerseys at events targeted at minors – which has since been remedied), then Lion will be in an untenable position for any future sports sponsorship. If the Complaint is upheld, it will therefore have wide ramifications for Lion and New Zealand teams and events that are sponsored by alcohol companies.
62. If the Complaints Board requires any further information, Lion would be happy to provide this.

### **Appendix 4**

#### **SUPPLEMENTARY RESPONSE FROM ADVERISER, LION NZ,**

#### **SPEIGHT'S HIGHLANDERS – COMPLAINT 21/309**

1. Thank you for your email on 13 August 2021 regarding the Complaints Board's request for Lion NZ Limited ("Lion") to provide certain audience data information as a supplementary submission to Lion's response dated 12 July 2021.
2. Lion's response dated 12 July 2021 was a response to the preliminary decision on procedural matters ("Preliminary Decision") in relation to the above complaint from Alcohol Healthwatch. The audience data information that the Complaints Board has requested was included in Lion's initial response dated 11 June 2021, which has been superseded by the response dated 12 July 2021.
3. The Preliminary Decision confirmed that the Advertising Standards Authority ("ASA") does not have jurisdiction over broadcast programme content, including the broadcast

or live streaming of games. Any appearance of the Speight's brand in footage from the Speight's Highlanders' games is subject to the Broadcasting Standards Authority Broadcasting Standards. Accordingly, Lion's response dated 12 July 2021 took the view that footage from the Speight's Highlanders' games is outside the jurisdiction of the ASA. We refer to the response dated 12 July 2021 for Lion's full submissions on this matter.

4. Lion did not include the audience data information requested by the Complaints Board in the response dated 12 July 2021 because Lion's primary argument was that any appearance of the Speight's brand in footage from the Speight's Highlanders' games is part of broadcasting programme content and subject to the Broadcasting Standards Authority Broadcasting Standards. Nevertheless, Lion provides the following television audience data for the Complaints Board's background information and as a supplementary submission, as requested:
  - a) TV broadcast data shows that, on average, 95% of all viewers of the Speight's Highlanders' games played during the 2021 Super Rugby Season (as at 11 June 2021) were over the age of 18. The average age of viewers of the Speight's Highlanders' games is approximately 39 years of age.
  - b) Data provided by Ticketek, the Speight's Highlanders' ticketing partner, shows that an average of 1,250 children's tickets are sold at each Speight's Highlanders' game at Forsyth Barr Stadium, this being a small fraction of both the ground's 24,000 seat capacity as well as the Speight's Highlanders' average attendance over the period of the sponsorship.
  - c) Viewer data for the Speight's Highlanders' games shown across the All Blacks' YouTube account shows that an average of 98.2% of viewers are over the age of 18. This is particularly telling given that minors (those under 18) tend to consume content through online/video-on-demand platforms and, should the Speight's Highlanders' content be of particular appeal to minors, one would expect this percentage to be significantly higher.
5. Please let us know if the Complaints Board requires any further information.