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| COMPLAINT NUMBER | 21/387 |
| COMPLAINANTS | Alcohol Healthwatch, the Southern District Health Board and Consumer New Zealand |
| ADVERTISER | National Brands |
| ADVERTISEMENT | Nitro, Facebook and Instagram |
| DATE OF MEETING | 22 September 2021 |
| OUTCOME | Settled-advertisement removed |

Advertisement: The advertisement on the Nitro Facebook and Instagram pages showed an image of a person in a bikini bending backwards on a stage, two 1.25L bottles and two grenade style cans of Nitro and text reading “3 DAY BENDER” The caption reads *Who’s ready for 3 Days of whatever’s you freakin like?! Be sure to get amongst a couple of quiet NITRO’s & have a crack at our new NITRO SUGAR FREE for the health machines, & mighty NITRO VENGEANCE (spelt this way on purpose) for those that like a bit of ‘green energy flavour’ in their lives. NITRO is the STRONGEST ENERGY RTD formulation so not for weak or faint hearted! #NitroVodka #SleepWhenYoureDead*

The Chair ruled the Complaint was Settled.

Complaint: Advertisement – 3 Day Bender (pole) consists of an image of a person bending backwards holding a pole dancing pole, two 1.25L bottles and one 4 pack of Nitro products and text reading “3 DAY BENDER?”. The caption reads *Who’s ready for 3 Days of whatever’s you freakin like?! Be sure to get amongst a couple of quiet NITRO’s & have a crack at our new NITRO SUGAR FREE for the health machines, & mighty NITRO VENGEANCE (spelt this way on purpose) for those that like a bit of ‘green energy flavour’ in their lives. NITRO is the STRONGEST ENERGY RTD formulation so not for weak or faint hearted! #NitroVodka #SleepWhenYoureDead*

Bender is a well-known term for heavily drinking alcohol (or using drugs) over a period of a time. The use of this term in both the image and the caption encourages drinking Nitro for three days. We submit that this breaches Guideline 2 (b) of the Code for Advertising and Promotion of Alcohol.

The wording “health machines” may imply that Nitro Sugar Free is healthy. Alcohol products,

are a population at particular risk of hazardous drinking and of experiencing alcohol related harms. Alcohol is not a healthy product for anyone. We submit that this breaches Guideline 1 (h) of the Code for Advertising and Promotion of Alcohol.

Use of the wording “NITRO is the STRONGEST ENERGY RTD” with the alcohol strength of the product being visible in the image (7%) emphasising the products alcohol strength. We submit that this breaches Guideline 2 (a) of the Code for Advertising and Promotion of Alcohol.

#SleepWhenYoureDead encourages the audience to forgo sleep and stay up all night drinking Nitro. This encourages consuming alcohol in large amounts. We submit that this breaches Guideline 2 (b) of the Code for Advertising and Promotion of Alcohol.

We submit that this advertisement is inconsistent with Principle 1 and 2 of the Code for Advertising and Promotion of Alcohol.

The Duplicate complaint from Consumer New Zealand raised similar issues.

Procedural note

The advertisement complained about is part of nine complaints lodged by Alcohol Health Watch and the Southern District Health Board about a total of 111 posts from the Nitro Facebook and Instagram accounts from February 2018 to March 2021. The Complaint was made on 30 June 2021 when the Code for Advertising and Promotion of Alcohol was still in force.

The Alcohol Advertising and Promotion Code came into force on 1 July 2021 for all advertisements including those recently posted on social media prior to that date. The Advertiser was therefore asked to respond to the complaint under the Alcohol Advertising and Promotion Code.

The Chair declined to adjudicate the complaints about the posts that were first displayed prior to 30 June 2020. While the Chair acknowledged social media users could still access these posts if they chose to, the nature of social media and the regularly updated content, with the most recent posts the most visible, meant a meaningful current audience was unlikely. The Secretariat reviewed all the posts subject to complaint and advised there was no obvious activity on those older posts. The Chair has therefore declined to adjudicate the complaints related to those posts.

The relevant provisions were the Alcohol Advertising and Promotion Code Principle 1, Rule 1 (c) Rule 1 (e)

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(c): Alcohol Consumption – Alcohol Advertising and Promotion must demonstrate responsibility and low risk Alcohol consumption.

Rule 1(e): Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

The Chair noted the Complainants were concerned that the advertisement was promoting irresponsible behaviour and encouraging immoderate drinking.

Upon receipt of the complaints the Advertiser responded “We do not have the time or energy to argue the opinion of the complaints, so to avoid wasting everyone’s (including ASA’s) time, we have on a without prejudice basis, removed all posts that were requested.

We appreciate all the time and resources ASA puts into managing the advertising industry and if there is anything you see that you are concerned with, please contact us and we will do our best to explain or resolve the situation.”

Given the Advertiser’s co-operative engagement with the process and the self-regulatory action taken in removing the advertisement, the Chair said it would serve no further purpose to place the matter before the Complaints Board.

The Chair ruled the matter was Settled.

Chair’s Ruling: Complaint **Settled - advertisement removed**

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.