

<b>COMPLAINT NUMBER</b>	18/277
<b>COMPLAINANT</b>	G Hewison
<b>ADVERTISER</b>	Garage Project
<b>ADVERTISEMENT</b>	Chocolate Beer, Packaging, Digital Marketing
<b>DATE OF MEETING</b>	25 September 2018
<b>OUTCOME</b>	Not Upheld

## SUMMARY

The Website, Facebook and Instagram advertisements and packaging for Garage Project's Chocolate Beer has a single image of the product with the words "Sweet dreams are made of these."

The front of the beer can displays the Whittaker's logo and "Creamy Milk" on the top left-hand corner of the can. The word "Chocolate" is written diagonally down the centre of the can and the word "Beer" and the Garage Project logo feature in the lower right-hand side of the can, together with a picture of Whittaker's founder. The back of the beer can has standard information about the alcohol content, ingredients and recycling information.

The Complainant is concerned that the packaging of the Creamy Milk Chocolate Beer product may create confusion with confectionery (chocolate) and or soft drinks (chocolate milk).

The Advertiser said milk and chocolate infused stouts and porters were common beer combinations with no evidence of any confusion with confectionary or soft drink products. The packaging and advertising design is based on vintage patterns and avoids using any direct relation to Whittaker's chocolate brands. The Advertiser said the word beer is clearly printed on the front centre of the can as well as several other places.

The Advertiser said its website and social media platforms are age-gated and targeted at an adult audience only. The product was displayed and available in selected retail stores.

The Complaints Board said the Advertiser had taken sufficient precautions to ensure the advertisement was targeted at an adult audience.

The Complaints Board said the imagery on the packaging was a sophisticated, vintage motif design and did not trigger any link to commercially available chocolate or milk-based products and was unlikely to have strong or evident appeal to minors.

The Complaints Board ruled the advertisements and packaging had been prepared with a high standard of social responsibility and were not in breach of Principle 1, Principle 3 or Guideline 3(b) of the Code for Advertising and Promotion of Alcohol.

The Complaints Board ruled the complaint was Not Upheld.

**[No further action required]**

Please note this headnote does not form part of the Decision.

---

**COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to the Code for Advertising and Promotion of Alcohol, Principle 1, Principle 3 and Guideline 3(a).

Principle 1 required the Complaints Board to consider whether the advertisement had observed a high standard of social responsibility.

Principle 3 required the Complaints Board to consider whether the advertisement had been 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) required the Complaints Board to consider whether the use of designs, motifs, or cartoon characters had strong or evident appeal to minors or created confusion with confectionary or soft drinks.

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

The Complainant is concerned that the packaging of the Creamy Milk Chocolate Beer product may create confusion with confectionery (chocolate) and or soft drinks (chocolate milk).

**The Advertiser's Response**

The Advertiser said milk and chocolate infused stouts and porters were common beer combinations with no evidence of any confusion with confectionary or soft drink products. The packaging and advertising design is based on vintage patterns and avoids using any direct relation to Whittaker's chocolate brands. The Advertiser said the word beer is clearly printed on the centre of the can as well as several other places.

The Advertiser said its website and social media platforms are age-gated and targeted at an adult audience only. The product was displayed and available in the alcohol section of selected retail stores only.

**The Complaints Board Discussion**

The Complaints Board noted that alcohol packaging is specifically covered in the Code for Alcohol Advertising and Promotion and it had jurisdiction to consider the complaint.

The Complaints Board began by discussing the product and agreed the chocolate stout style drink was a common flavour within the craft beer market and unlikely to be an entry level alcoholic beverage.

***Does the packaging have strong or evident appeal to minors or create confusion with confectionary or soft drinks?***

The Complaints Board said the imagery on the packaging was a sophisticated, vintage motif design which did not trigger any link to commercially available chocolate or milk-based products and was unlikely to resonate with minors in any way other than the word 'chocolate.'

The Complaints Board noted the word ‘chocolate’ was more prominent than the word ‘beer’ on the front of the can but said the back of the can contained more detail about the beer product which made it clear the product was an alcoholic beverage. The Board further noted the sticker which covered the opening tab provided another level of protection against confusion with a non-alcoholic product.

***Was the advertisement directed at adult audiences?***

The Complaints Board said the Advertiser had taken the sufficient precautions to ensure the advertisement was targeted at an adult audience. The Complaints Board noted the digital advertisement was only available on the 18+ age-gated Garage Project Website, Facebook and Instagram pages, with ‘Beer’ clearly stated on the front of the advertisement in bold type. The product was displayed and available in selected retail stores, within identified alcohol areas. The Board agreed the restricted placement also meant it would be unlikely for the beer to be mistaken for chocolate milk or confectionary products within a retail environment.

The Complaints Board said taking into account the context, medium, audience and product, the advertisements and packaging were directed at an adult audience and did not have strong or evident appeal to minors or create confusion with confectionary or chocolate milk products.

The Complaints Board ruled the advertisements and packaging had been prepared with a high standard of social responsibility and were not in breach of Principle 1, Principle 3 or Guideline 3(b) of the Code for Advertising and Promotion of Alcohol.

Therefore, the Complaints Board ruled the complaint was Not Upheld.

**DESCRIPTION OF ADVERTISEMENT**

The Website, Facebook and Instagram advertisement for Garage Project’s Chocolate Beer has a single image of the product with the words “Sweet dreams are made of these.”

The front of the beer can displays Whittaker’s logo and “Creamy Milk” on the top left-hand corner of the can. The word “Chocolate” is written diagonally down the centre of the can and the word “Beer” and the Garage Project logo feature in the lower right-hand side of the can, together with a picture of Whittaker’s founder. The back of the beer can has standard information about the alcohol content and ingredients and recycling information.

**Whittaker’s Creamy Milk Chocolate Beer**

This complaint relates to an alcohol advertisement for Whittaker’s Creamy Milk Chocolate Beer.

The advertisement is the product packaging itself, as per the definition of “Alcohol advertising and promotion” as set out in the Advertising Standards Authority Code for Advertising and Promotion of Alcohol.

We believe the advertisement may breach Principle 3, Guideline B, of the Advertising Standards Authority Code for Advertising and Promotion of Alcohol:

Alcohol advertising and promotions shall not use designs, motifs, or cartoon characters that have strong or evident appeal to minors or that create confusion with confectionery or soft drinks.

We are concerned that the packaging may create confusion with confectionery (chocolate) and or soft drinks (chocolate milk).

We would appreciate if the Advertising Standards Authority Complaints Board would consider whether this advertisement does or does not breach Principle 3, Guideline B of the Code for Advertising and Promotion of Alcohol.

## **CODES OF PRACTICE**

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

**Principle 1:** Alcohol advertising and promotions shall observe a high standard of social responsibility.

**Principle 3:** Alcohol advertising and promotions shall be directed at adult audiences. Alcohol advertising and promotions shall not be directed at minors nor have strong or evident appeal to minors in particular. This applies to both content and placement.

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

### **RESPONSE FROM ADVERTISER, GARAGE PROJECT**

On behalf of Garage Project and Whittaker's, I write to you today in response to the complaint received from G Hewison concerning our Chocolate BEER ad.

Milk and Chocolate Beer in the form of Stouts, and Porters is an internationally recognised style that has existed for hundreds of years, with the origins dating as far back as 3,000 years. It is very popular among beer drinkers, with multiple commercially available brands on the New Zealand market today. There is no evidence that confusion with soft drinks or confectionery has been caused with the Garage Project Chocolate BEER, or any other available Chocolate Beer readily available.

The designs and motifs of the advertisement are based solely on the product can. These designs are in turn based on historic tin packaging and vintage patterns that were unrelated to confectionery to evoke a premium and adult feel. Great care was taken to base these designs on products other than commercially available chocolate, and to be sufficiently differentiated from Whittaker's chocolate as to avoid any possible confusion. The word BEER is very clearly printed on the centre of the can image, and therefore advertisement. It is connected to Chocolate, so that 'Chocolate BEER' reads together and sits closely to the Garage Project logo, which is synonymous with beer related products.

The can adheres to all advertising guidelines, with 'BEER' printed clearly in multiple places, and all beer ingredients clearly listed. A protective sticker was placed on the lid of every can with pouring instructions, further reinforcing that it was a beer. Combining these elements, the result is a premium beer can that could not be mistaken for confectionery or soft drinks.

Garage Project's paid advertisements were run on social media platforms which were age targeted to 18+ audiences. At no time was the advertisement targeted or intended to reach a sub 18-year-old audience.

Given Whittaker's brand reputation in New Zealand, Whittaker's also took great care around any advertisement of Chocolate BEER. This included:

- Age locking all Facebook activity (organic or paid) to 18+ and ensuring all Instagram paid advertising activity was targeted 18+.
- Lastly Whittaker's chose not to use SnapChat as a platform for any advertisement for Chocolate BEER, given that 18% of SnapChat users in NZ are aged 13-17, and we felt this was too close to the 25% youth audience threshold and so was voluntarily excluded from Whittaker's activity for Chocolate BEER.

The Chocolate BEER Advertisement was clearly designed for lovers of Garage Project beer and their products, to let them know of a new collaboration around 'Chocolate Beer', produced with local company Whittaker's. The Garage Project website has an age gate to limit minors from being exposed to the product on our website.

The product itself was only displayed and available in the alcohol section of select trusted retail stores — New World, Moore Wilson's, Liquorland, Garage Project cellar door and did not receive full retail distribution. These sections are separate from main grocery retail and have clear systems in place to keep minors away. Therefore, there is no way the product would cause confusion with confectionary or soft drinks which are kept in other parts of the store.

Chocolate Beer is a limited release and has now sold out. Great lengths were taken by Garage Project and Whittaker's to ensure that the release was limited and targeted at all steps. The beer was intentionally brewed at a lower alcohol level of 4.7% abv to be enjoyed at social adult occasions in a responsible fashion.

For these reasons, we reject the complaint submitted by G Hewison.

Contact person for advertising complaints	Tom Greally CEO Garage Project
Name and contact at creative agency	
Name and contact at media agency	Whittaker's Media Agency: Matt Bale MBM Media
A basic, neutral description of the advertisement	The ad is a single image of a product shot (can of 'Chocolate BEER') with the words 'Sweet Dreams Are Made of These' underneath, with the Whittaker's and Garage Project logo underneath
Date advertisement began	28th June
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Garage Project Age Gated Facebook Page and Instagram

Is the advertisement still accessible — where and until when?	Yes, on the age gated Garage Project Facebook and Instagram page
A copy of digital media file(s) of the advertisement — if the complaint relates to on-screen graphic, please send a broadcast quality version.	
Who is the product / brand target audience?	Fans of Garage Project brewery and their beers.
Clear substantiation on claims that are challenged by the complainant.	As per the attached letter, the advertisement is only available on the age gated Garage Project Facebook and Instagram page. The ad comprises the Chocolate BEER can, with the words BEER clearly stated on the front of the advertisement in bold type.
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
For Broadcast advertisements:	
A copy of the script	
A copy of the media schedule and spot list (Please remove all financial information)	
CAB key number and rating	
For Digital advertisements:	
What platform tools have you used to target your audience?	An age gated Garage Project Facebook and Instagram page post with limited R18+ target advertising boost applied.

**APPEAL INFORMATION**

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