

7COMPLAINT NUMBER	20/191
COMPLAINT ON BEHALF OF	Alcohol Healthwatch
ADVERTISER	Craft Brewing Co
ADVERTISEMENT	Craft Brewing Co, Website, Facebook
DATE OF MEETING	26 May 2020
OUTCOME	Not Upheld No Further Action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about the Facebook and Website advertisements and packaging for Craft Brewing ‘Lockdown’ RTD products. The Board said the use of the yellow and white stripes and related imagery was unlikely to confuse consumers into thinking the brand had Government endorsement. The advertisements did not suggest alcohol was a necessity or promote any therapeutic benefit. The majority of the Board said the advertisements were socially responsible given the context and restricted medium used.

Description of Advertisements

The Facebook advertisement for the Lockdown RTD products shows the yellow and white stripped cans with the name ‘LOCKDOWN’ and a padlock inside a black circle. The accompanying text explains why the brand has been created and includes the message “stay home stay safe.”

The age gated website advertisement shows a picture of the yellow and white stripped can with the wording “Stay Safe Stay Home”, “Bourbon & Cola 7%”, “Gin & Tonic with Lime 7%” The phrase “STAY THE F__HOME” appears at the top of the advertisement. The order on-line tab takes consumers to the purchase page.

Description of Packaging

The RTD products use yellow and white stripped cans with the name ‘LOCKDOWN’ and a padlock inside a black circle. The cans include a definition of ‘lockdown’, ingredient information and #“STAY THE F__HOME”.

Summary of the Complaint

The Complainant is concerned the packaging and advertising demonstrates a lack of social responsibility by using the identical Government-endorsed COVID branding on alcohol products and that customer confusion could arise from thinking the product is Government endorsed. The Complainant also considers the advertisements are depicting alcohol as a necessity.

Issues Raised:

- Social Responsibility
- Depiction of Alcohol as a necessity or for therapeutic benefit

Summary of the Advertiser’s Response

The Advertiser said that in a bid to survive, it decided to produce and sell its own ready to drink product. The Lockdown cans contain statements about the definition of lockdown, the not safe while pregnant logo, enjoy responsibly statement and “STAY The F__HOME”

message which meet the social responsibility obligation. The Advertiser said there is no suggestion of product being necessary for relaxation or for therapeutic benefit.

The Advertiser noted the Covid-19 Government website allows for branding to be downloaded and challenged businesses to think of creative new ideas. The Advertiser confirmed the Lockdown artwork was created inhouse and there is no suggestion these products are endorsed by the Government.

Relevant ASA Codes of Practice

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

CODE FOR ADVERTISING AND PROMOTION OF ALCOHOL

Principle 1: Alcohol Advertising and Promotions shall observe a high standard of social responsibility.

Guideline 1(d): Alcohol advertising and promotions shall not depict alcohol as a necessity, nor required for relaxation nor suggest it offers any therapeutic benefit.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/143 which was Upheld and 18/382 which was Settled.

The full versions of decisions since 2015 can be found on the ASA website:

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

Decision 20/143 concerned a website and email advertisement for the furniture retailer Idiya Ltd which made deliberate if tacit reference to the Covid-19 pandemic with the use of the words “viral” “spread” and “lockdown”.

The Complaints Board was of the view that the unrestricted and unsolicited advertisements were not socially responsible in the context of a global pandemic where many lives have been lost, this play on words was both insensitive and irresponsible.

Decision 18/382 concerned a billboard advertisement for Lamont Wines. The label for the “Therapy” range of wine had an image of a group of chairs arranged in a circle above the product name “Therapy”. The Complainant was concerned the product name and label design depict an Alcoholics Anonymous setting and suggest drinking wine is an alternative to seeking help from Alcoholics Anonymous. The Advertiser decided to discontinue the Therapy labelling or actively promote the remaining stock. The Chair of the Complaints Board said the complaint was settled due to the self-regulatory action taken by the Advertiser.

The Chair directed the Complaints Board to consider the current complaint in relation to the definition of 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.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the Facebook advertisement is a small start-up company has designed a RTD product to sell online during the lockdown period.

The Complaints Board agreed the likely consumer takeout of the website advertisement is a price and product description of an RTD called 'LOCKDOWN' which is being marketed for sale during the Government Lockdown in response to the COVID-19 pandemic.

The RTD products use yellow and white stripped cans with the name 'LOCKDOWN' and a padlock inside a black circle. The cans include a definition of 'lockdown', ingredient information and #“STAY THE F__HOME”.

Product

The 'Lockdown' product is yellow and white stripped cans of Ready to Drink (RTD) Bourbon & Cola and Gin & Tonic with Lime.

Audience

The Complaints Board said the audience for the age-gated website and Facebook advertisements was likely to be adults looking to purchase alcohol. The Facebook advertisement was targeted at an audience considering New Zealand made products in order to support the local economy.

Placement

The Complaints Board said the placement of the advertisement within restricted media would limit the exposure of the advertisements to untargeted audiences including minors.

Context

The Complaints Board noted the packaging and the advertisements had evolved as a response to the Government lockdown measures taken in response to the Covid-19 pandemic. The Complaints Board said advertisements were the result of the opportunist response from a Kiwi business faced with the challenges of a shut down of most retail and hospitality operations.

The Complaints Board noted the Government had provided for the sale and supply of alcohol products through remote selling and supermarkets during Level 4.

Do the advertisements imply the product is Government endorsed?

The Complaints Board noted the Complainant's concern the advertisements could cause consumer confusion. The Complaints Board said that despite the product imagery being similar to the Government's Covid-19 branding, the average consumer would be unlikely to see the product or advertising as having been produced or endorsed by the New Zealand Government, as it was an alcohol product.

The Board noted that the Government had not restricted the commercial use of its yellow and white striped branding and that in any event, it would be outside the Board's jurisdiction to enforce any restrictions. The Board's role is to consider whether the advertising and packaging breach the principles and rules of the ASA Codes.

The Complaints Board noted that upon receipt of the complaint, the Advertiser had added the disclaimer "This product is not endorsed by the NZ Government" to the purchase page of the website to address any potential confusion.

Do the advertisements depict alcohol as a necessity, required for relaxation or of therapeutic benefit?

The Complaints Board agreed the advertisements did not make any claims which suggested alcohol was a necessity or the product was an essential item. The advertisements did not advocate any therapeutic benefit could be gained through the consumption of the product.

The Board said the content of the advertisements were factual price and product information.

The Complaints Board unanimously agreed the packaging and advertisements were not in breach of Guideline 1(d) of the Code for Advertising and Promotion of Alcohol.

Do the advertisements observe a high standard of social responsibility?

The majority of the Complaint Board said taking all of the above into account, the packaging and the advertisements had been prepared with the high standard of social responsibility required of alcohol advertising. As the Board agreed there was unlikely to be any consumer confusion about any Government endorsement, the majority of the Complaints Board said that within the context of the exceptional time in which the product and advertisements appeared, combined with the restricted medium in which they were placed, the required standard had been met.

The majority of the Complaints Board said the “Stay home stay safe” message, while similar to the official “Stay home, save lives” Government slogan, was acceptable in the context of an on-line sales message during a time when consumers were asked to avoid unnecessary travel. The majority of the Complaints Board did not consider the stay safe statement was directly associated with the alcohol product itself and reflected a myriad of similar messages being used by advertisers to support good behaviour during the lockdown period.

The majority of the Complaints Board differentiated the packaging and advertisements before it from the advertisement subject to complaint in Decision 20/043, which was Upheld by the Complaints Board. The advertisement in that case used the wording ‘virus’ and ‘spread’ in a trivial manner via an unsolicited email advertisement which the Board said was insensitive given the timing. The majority of the Board said in this case the imagery and references were not about Covid-19 virus directly, but rather referred to the period of time when New Zealanders were restricted in what they could do and buy.

A minority of the Complaints Board disagreed. The minority said it was not socially responsible to use the branding imagery and language created by the Government to manage a global health crisis for the purposes of selling alcohol. The minority said the intended tongue-in-cheek humour did not save the packaging and advertisements from breaching the high standard required for alcohol advertising.

The minority of the Complaints Board did not consider it socially responsible to use the “Stay home stay safe” message in an alcohol advertisement. The minority said the imagery and safety language is intrinsically linked to the alcohol products which have known health and social issues.

However, in accordance with the majority, the Complaints Board said the packaging and advertisements were socially responsible, taking into account context, medium, audience and product and were not in breach of Principle 1 or Guideline 1(d) of the Code for the Advertising and Promotion of Alcohol.

Outcome

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

No further action required.

APPEAL INFORMATION

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

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

This complaint relates to an alcohol advertisement for the Lock Down RTDs available in a Gin and Tonic with lime and Bourbon and Cola.

The attached screenshot at the end of this letter was forwarded to us by a concerned member of the medical community. This complaint refers to the packaging, design, and branding of the product, including but not limited to the name and labels. We submit that this product may be in breach of Principle 1 of the Code for Advertising and Promotion of Alcohol.

The Facebook post seen by the community member can be found here:

<https://www.facebook.com/groups/519618962054849/permalink/529517641064981/>

An online shop for the product can be found here:

<https://stay-the-f-k-home.myshopify.com/>

The packaging features yellow and white stripes replicating the branding of the official New Zealand Government Unite against COVID-19 materials. The product is called LOCK DOWN, and features a logo of a padlock within a black circle. This particular logo is not featured in government COVID-19 materials but other icons of a similar style are featured as shown below:



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

Alcohol advertising and promotions shall observe a high standard of social responsibility.
Guideline 1(d) states:

Alcohol advertising and promotions shall not depict alcohol as a necessity, nor required for relaxation nor suggest it offers any therapeutic benefit.

Guidance notes further state:

Advertisements should not convey the message that a state of relaxation cannot be achieved without the consumption of alcohol but it is acceptable to suggest that a consumer can relax while consuming alcohol moderately, for example, an invitation to relax or unwind with brand X.

Guidance released by the Advertising Standards Authority around COVID-19 and advertising alcohol stated that some content and themes relating to the COVID-19 pandemic may demonstrate a lack of a high standard of social responsibility expected when advertising or promoting alcohol. We question the use of the identical Government-endorsed COVID branding on these alcohol products, and believe that customer confusion could arise. Of significant concern, we worry that some consumers may view the product as endorsed by the Government.

We would appreciate if the Advertising Standards Authority Complaints Board would consider whether this product does or does not breach Principle 1 (and other related guidelines) of the Code for Advertising and Promotion of Alcohol. We ask that the Complaints Board consider this complaint in the context of the COVID-19 pandemic as well as the further guidance issued by the Advertising Standards Authority.

Appendix 2

RESPONSE FROM ADVERTISER, CRAFT BREWING

We own a small contract brewing company (Craft Brewing Company) that started trading in January. We were due to begin production late 2019 however had an unforeseen setback with a piece of equipment (a pasteuriser steam unit) due to bad advice from a reputable NZ company which forced us to contract out our first three major production runs at a cost of \$120,000 per run. This was the great start that our company had needed to get well on its feet. Unfortunately our business was struggling to make headway because of this.

We had just started making some traction after this setback when COVID-19 hit the country and we were forced into Lockdown. All contracts at the brewery were cancelled as our clients no longer had an outlet to sell with restaurants and bars closed. Keg sales dropped 100%, beer sales dropped and our RTD clients were loaded with stock they could not move unless they had an online presence.

Our business was suffering as we are such a new company and do not qualify for any Government Funded Schemes. In order for us to keep the brewery in production we decided to produce and sell our own Ready to Drink product. The alternative was liquidating the business – an option we are not looking to entertain.

The 'Lockdown' brand was created.

This is our response to the ASA Complaint laid against packaging, design and branding of the Lockdown Gin & Tonic and Lockdown Bourbon & Coke flavoured ready to drink beverages.

Dr Nicki Jackson of Alcohol Healthwatch notes her concerns and we have responded as follows:

1. *"Alcohol advertising and promotions shall observe a high standard of social responsibility"*
The 'Lockdown' brand states the following on each can, satisfying the social responsibility obligation
 - The definition of 'Lockdown' as taken from the English Dictionary "lockdown noun lock-down/lak--doun\ = an emergency measure or condition in which people are temporarily prevented from leaving a restricted area or building (such as home) during a threat of danger'
 - "#Staythef__Home"
 - Shows the 'Not Safe to Drink Whilst Pregnant' logo
 - Shows the 'Enjoy Responsibly' statement

2. *“Alcohol advertising and promotions shall not depict alcohol as a necessity, nor required for relation nor suggest it offers any therapeutic benefit”*
In no way has ‘Lockdown’ promotions, advertising or branding stated or suggested that it is necessary or that it offers any therapeutic benefit.
3. *“Advertisements should not convey the message that a state of relaxation cannot be achieved without the consumption of alcohol but it is acceptable to suggest that a consumer can relax while consuming alcohol moderately, for example, an invitation to relax and unwind with brand X.”*
No such statement (as above) has been made by the manufacturers/owners of the ‘Lockdown’ brand about the consumption of either the Lockdown Gin & Tonic or the Lockdown Bourbon & Coke Flavoured drinks.
4. *“Guidance released by the Advertising Standards Authority around COVID-19 and advertising alcohol stated that some content and themes relating to the COVID-19 pandemic may demonstrate a lack of a high standard of social responsibility expected when advertising or promoting alcohol. We question the use of the identical Government-endorsed COVID-19 branding on these alcohol products, and believe that customer confusion could arise. Of significant concern we worry that some consumers may view the product as endorsed by the Government.”*
 - The Government has created a website www.covid19.govt.nz which offers all resources including a business toolkit. Within this website the New Zealand Government Branding for Covid-19 has been made available for anyone to download. This toolkit contains all icons, promotional materials, posters, including the yellow & white stripe borders the New Zealand Government has used.
 - In addition to this there is a link within this website #stayhomeforit where the Government encourages companies to “Do what you do best – create something”.
 - There is not a list of products that may be exempt from production noted on this site.
 - The ‘Lockdown’ RTD artwork and icons were, however, not taken from this site and was created in-house.
5. Our ‘Lockdown’ brand was designed to promote the #stayhome #staysafe message. We have not suggested these products were ever endorsed by the Government. On all our social media platforms the message is “stay home, stay safe”.
6. The media platforms we have used to promote ‘Lockdown’ is as follows:

www.drinklockdown.online

<https://www.facebook.com/Drink-Lockdown>

Facebook – New Zealand Made Products (Paul Ottaway)

Instagram

<https://www.stuff.co.nz/business/prosper/advice/121302240/coronavirus-nzmade-facebook-group-throws-lifeline-to-small-businesses>