

COMPLAINT NUMBER	20/191
APPEAL NUMBER	20/014
COMPLAINT ON BEHALF OF	Alcohol Healthwatch
ADVERTISER	Craft Brewing Co
APPLICANT	Alcohol Healthwatch
ADVERTISEMENT	Craft Brewing Co, Website, Facebook and packaging
DATE OF MEETING	17 July 2020
OUTCOME	Appeal Declined Complaint Not Upheld

SUMMARY

The Complaints Board ruled on 26 May 2020 the complaint made by Alcohol Healthwatch about website and Facebook advertisements and packaging for Craft Brewing Co was Not Upheld.

The Complainant appealed the decision. The Complainant identified the grounds for appeal as; (a) The proper procedures have not been followed, (b) There is new evidence of sufficient substance to affect the decision, (c) Evidence provided had been misinterpreted to the extent that it affected the decision and (d) The decision is against the weight of evidence.

The appeal application was considered by the Chairperson of the Appeal Board.

The Chairperson said the Complaints Board had considered all relevant issues on code compliance for the advertising and packaging during its deliberation.

The Chairperson ruled the grounds on which an appeal could proceed had not been met and the application was declined.

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

CHAIRPERSON'S RULING

The Chairperson of the Appeal Board viewed the application for appeal. She noted there are five grounds upon which an appeal is able to proceed. These are listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and are as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.

- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Applicant had identified the grounds for appeal as (a) The proper procedures have not been followed, (b) There is new evidence of sufficient substance to affect the decision, (c) Evidence provided had been misinterpreted to the extent that it affected the decision and (d) The decision is against the weight of evidence.

The Chairperson reviewed the complaint, the advertisements, the Advertiser's response, the AdHelp Information Service COVID-19 and Alcohol guidance, the Complaints Board Decision and the appeal application.

Have the proper procedures been followed?

The Chairperson of the Appeal Board noted the Applicant said the Complaints Board had not referred to the AdHelp Information Service COVID-19 and Alcohol guidance in its deliberations.

The Chairperson said the ASA issued the AdHelp in mid-April to remind the advertising industry about its responsibilities under the Code for Advertising and Promotion of Alcohol. The guidance had a particular focus on the care needed around advertising that encouraged the irresponsible consumption of alcohol during the lockdown period.

The Chairperson was advised the AdHelp Information Service COVID-19 and Alcohol guidance was provided to the Complaints Board as part of the agenda papers it reviewed at its meeting on 26 May. The Chairperson noted the Applicant refers to the guideline in its appeal as "further guidance". The Chairperson confirmed the AdHelp did not create new rules or a higher standard for alcohol advertising but rather drew attention to the existing rules and provided some interpretation guidance. The Chairperson said the Complaints Board's deliberation was based on the requirements of Principle 1 and Guideline 1(d) of the Code for Advertising and Promotion of Alcohol Code and the proper procedures had been followed.

Is the decision against the weight of evidence?

The Chairperson of the Appeal Board noted the Applicant's concern that the Complaints Board had limited its consideration of social responsibility to the narrow point of whether the packaging and advertisements could cause consumer confusion about Government-endorsement through the use of the Covid-19 branding in the packaging and advertisements.

The Chairperson agreed the Complaints Board decision had given due consideration to the Government endorsement issue and said this was appropriate given the emphasis the original complaint had placed on this issue.

The Chairperson disagreed with the Applicant that the Complaints Board's consideration of social responsibility had been limited to this concern. The Chairperson noted the Complaints Board had discussed the complaint in relation to the product, audience, placement and context of the advertisements and packaging. The Complaints Board also considered whether the message in the advertisements or packaging depicted alcohol as a necessity or required for relaxation or therapeutic benefit. The Chairperson said the decision was not against the weight of evidence.

Has the evidence provided been misinterpreted to the extent that it affected the decision?

The Chairperson noted the Complaints Board was unanimous in its view the advertisements and packaging had not met the threshold to breach the high standard of social responsibility on all points raised except the “Stay home stay safe” message.

The Chairperson said the minority view represented in the decision pointed to the fact that a considered and robust deliberation had taken place. On balance, the context of the advertisement explaining the product’s inception to consumers in the Facebook post, the link between staying home and the on-line delivery message and the Government’s provision for the sale and supply of alcohol through remote selling were all factors the majority of the Complaints Board said had supported its consumer takeout. The Chairperson did not consider evidence has been misinterpreted.

Is there new evidence of sufficient substance to affect the decision?

The Chairperson of the Appeal Board said the Applicant has not raised any new evidence. The nine member Complaints Board considers the likely consumer takeout of an advertisement and packaging in the context of the Code for Advertising and Promotion of Alcohol. The Chairperson confirmed the relevant aspects of the code emphasised in the AdHelp Covid-19 guidance notes had been adequately considered by the Complaints Board.

The Chairperson said that while the Applicant disagreed with the decision, this was not a ground for appeal.

The Chairperson ruled the grounds on which an appeal could proceed had not been met and the application was declined.

Chairperson’s Ruling: Appeal application **Declined** Complaint **Not Upheld**

APPENDICES

1. Description of Advertisement
 2. Summary of Complaints Board Decision
 3. Appeal Application
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Appendix 1

DESCRIPTION OF ADVERTISEMENT

The Facebook advertisement for the Lockdown RTD products shows the yellow and white striped 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 striped 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 striped 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”.

Appendix 2

SUMMARY OF 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.

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.

Appendix 3

APPEAL APPLICATION FROM COMPLAINANT

Subject: Appeal - Complaint 20/191 - Craft Brewing Co – Lockdown RTD

This letter is to notify the Appeal Board Chairperson that Alcohol Healthwatch wishes to appeal the decision of *Not Upheld* relating to complaint 20/191 of an alcohol advertisement for RTDs branded as 'Lockdown'.

Complaint 20/191

Alcohol Healthwatch submitted a complaint that the advertisement was in breach of Principle 1, and Principle 1 Guideline (d) of the ASA Code for Advertising and Promotion of Alcohol (hereinafter referred to as the 'Code'). Specifically, the complaint articulated concern that the packaging and advertising replicated (the yellow and white stripes) and mimicked (the padlock logo within black circle) branding of official New Zealand Government Unite against COVID-19 materials. Alcohol Healthwatch submitted that the packaging and advertisements for this product were not prepared observing a high standard of social responsibility. Alcohol Healthwatch also made reference to the further guidance issued by the Advertising Standards Authority on COVID-19 and advertising alcohol.

Alcohol Healthwatch appeals the Complaints Board decision on the following grounds:

- The proper procedures have not been followed;
- There is new evidence of sufficient substance to affect the decision;
- Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision; and
- The decision is against the weight of evidence.

Alcohol Healthwatch asked the Complaints Board to consider whether the product did or did not breach Principle 1 of the Code, and to consider the complaint in the context of the COVID-19 pandemic as well as the further guidance issued by the ASA.

Alcohol Healthwatch submits that the Complaints Board insufficiently considered whether Principle 1 had been breached, by narrowing its consideration to a single point raised in the complaint, i.e. whether there may be confusion that the product is Government-endorsed. Alcohol Healthwatch submits that by limiting its consideration to that single issue, the Complaints Board failed to consider the broader issue of observing a *high standard* of social responsibility that Principle 1 of the Code covers.

In addition, there is no evidence in the decision from the Complaints Board that the further guidance issued by the ASA was considered during the decision-making process, even though this was specifically requested in the complaint. Given that the ASA released a document providing specific guidance for alcohol advertisers during the COVID-19 pandemic, Alcohol Healthwatch is disappointed that this guidance has not been referred to when this product label and advertisement are inextricably linked with the COVID-19 pandemic.

Alcohol Healthwatch agrees with the minority of the Complaints Board who 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, and that the intended tongue

in cheek humour did not save the packaging and advertisements from breaching the high standard required for alcohol advertising.

Alcohol Healthwatch also agreed with the minority of the Complaints Board who said it was not socially responsible to use the “stay home stay safe” message in an alcohol advertisement, when this message is linked to alcohol products which have known health and social issues.

Alcohol Healthwatch submits that the “stay home stay safe” message in an alcohol advertisement needs to be considered in relation to the same communication messages used by the Government during the COVID-19 pandemic. Considered in this context, the alcohol messaging therefore *implies* that people should order Lockdown RTDs so they can stay home, stay safe, and drink alcohol, which is going to be of significant utilitarian benefit for consumers in surviving Government-imposed lockdowns and other disruptions associated with the global COVID-19 pandemic.

The COVID-19 and Advertising Alcohol guidance issued by the ASA contains several points that are relevant to this appeal. Firstly, advertisers are expected to observe a high standard of social responsibility in both the preparation and placement of alcohol advertisements and product names, labels and packaging. Secondly, advertisements must not depict alcohol as a necessity or that it is required for relaxation or that it has any therapeutic benefits. Alcohol Healthwatch submits that if a high standard of social responsibility had been observed, it would not have replicated and mimicked the branding of Government-endorsed materials that had been developed to maintain public safety in the extraordinary circumstances.

The pandemic-specific guidance issued by ASA further encourages advertisers to “Take care if you use humour to advertise alcohol relating to COVID-19 and/or the lockdown, or in a way that positions alcohol as a means to help manage the challenges presented by COVID-19”. Alcohol Healthwatch submits that the Lockdown RTDs have not taken care in using humour or positioning alcohol as a means to help manage the challenges presented by COVID-19, including the Government-imposed lockdown.

The guidance issued by ASA lists (not exhaustively) “advertising content and themes (actual or *implied*) relating to the COVID-19 pandemic may demonstrate a lack of high standard of social responsibility expected when advertising or promoting alcohol” (emphasis added). The list includes the following:

- Alcohol is necessary or essential to survive lockdown or the pandemic
- Alcohol is necessary to relieve anxiety, stress and depression caused by the lockdown or infection with COVID-19 or from the economic impact of the pandemic
- Improvement in mood or relief from boredom during the pandemic

Alcohol Healthwatch submits that these themes (actual or implied) are used in the labelling, advertising, and promotion of the Lockdown RTDs. The economic impact of the pandemic on the advertiser is a theme explicitly stated in the Facebook post and wider origin story of the product, and the product is positioned as essential to the producer surviving the lockdown.

Alcohol Healthwatch submits that the Complaints Board has not followed the proper procedures in considering the ASA’s own guidance on COVID-19 and Advertising Alcohol, and that this guidance could be considered as new (to the Complaints Board) evidence of sufficient substance to affect the decision. By not considering the ASA guidance on COVID-19 and Advertising Alcohol, even though the complaint specifically requested that they do so, the complaints board has not taken into account the full range of evidence in their decision making. Alcohol Healthwatch submits that the majority decision made by the Complaints

Board was against the weight of evidence, which must be considered in context with the ASA issued guidance on COVID-19 and Advertising Alcohol.

Alcohol Healthwatch looks forward to further correspondence on this matter.