

<b>COMPLAINT NUMBER</b>	21/038
<b>ADVERTISER</b>	Lotto NZ
<b>ADVERTISEMENT</b>	Instant Kiwi - Scratchie of the Summer, Website, Facebook
<b>DATE OF MEETING</b>	23 February 2021
<b>OUTCOME</b>	Not Upheld No Further Action Required

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

The Complaints Board did not uphold a complaint about a website and Facebook advertisement for Lotto NZ's Scratchie of the Summer, featuring the band Six60. The Complaints Board said the Advertiser had provided sufficient evidence about the core audience demographic of the band being over 18 years of age. The Complaints Board said the presentation and placement of the advertisements were unlikely to appeal to children and young people and the advertisement did not target minors.

#### **Advertisement 1**

The Lotto NZ website, [www.mylotto.co.nz](http://www.mylotto.co.nz), advertisement promotes the new Six60 'Scratchie of the Summer'. The advertisement features an image of an Instant Kiwi ticket with the band Six60 on the front, alongside an image of the band. The advertisement states that there are four top prizes of \$60,000 to be won and explains how to play the game.

#### **Advertisement 2**

The Facebook advertisement for the Six60 Instant Kiwi scratchie appeared on the Six60 Facebook page and said, "Excited to announce our new Instant Kiwi scratchie, 3 lucky fans will win \$60k and all the profits will go to help incredible kiwi charity causes like the Raukatauri Music Therapy Centre, Star Jam NZ and Heart Kids NZ. In-store from today. Must be 18+ to participate." The post shows an image of the Instant Kiwi ticket featuring Six60 alongside other images of the band.

### **Summary of the Complaint**

The Complainant was concerned the advertisements targets young people as Six60 have a large fan base of young people under the age of 18.

#### **Issues Raised:**

- Social Responsibility
- Gambling advertising targeting children and young people

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

The Advertiser defended the advertisement. It said due diligence was undertaken before Lotto's partnership with Six60's to ensure the band's core audience profile was aged 18+. The Advertiser provided data from Spotify, Instagram and audience demographic information to confirm that more than 90% of Six60's audience was aged over 18 years old. The Advertiser confirmed all creative for the advertising would include prominent R18 messaging. The Advertiser said the imagery and visuals used were targeted to an older audience using darker colours and a standard promotional image of the band. The Advertiser provided evidence demonstrating that 90% of Six60's Facebook audience is over 18 years of age.

## Relevant ASA Codes of Practice

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

### GAMBLING ADVERTISING CODE

**Principle 1: Social Responsibility:** Gambling advertisements must be prepared and placed with a high standard of social responsibility to consumers and to society.

**Rule 1(a) Children and Young People:** Gambling advertisements must not target children or young people.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/327, which was Not Upheld and 18/110 which was Upheld in part.

The Chair noted these precedent decisions were considered under the former Code for Advertising Gaming and Gambling.

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

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

**Decision 18/327** concerned a website advertisement for Lotto NZ's Instant Kiwi ticket featuring four Kiwi films.

The Complaints Board said it did not have jurisdiction to consider the Instant Kiwi ticket itself as this was a product rather than advertising. The Complaints Board ruled the films featured in the website advertisement were more likely to appeal to adults. The Board said the placement of the advertisement was unlikely to be seen by a significant number of minors given the evidence provided by the Advertiser that 94.5% of visitors to the website are 25 years or over.

**Decision 18/110** concerned a radio and in-store advertisement for Lotto NZ's Battleship scratchie game.

The Complaints Board Upheld the in-store advertisement, ruling the game graphics and imagery of a recognisable children's board game would have strong appeal to minors. This combined with the placement in a supermarket meant the advertisement was easily accessible to children.

The Complaints Board did not Uphold the radio advertisement due to its composition and placement. It said the advertisement used adult voices and played on radio where minors were less likely to engage with the advertisement or product.

### Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Gambling Advertising Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised.

The Complaints Board confirmed that it did not have jurisdiction over the Instant Kiwi game. Its jurisdiction is confined to the advertisements promoting the game which appeared on the Lotto NZ website, and on the Six60 Facebook Page.

### **Advertisement 1 – Lotto NZ website**

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was it promoted an Instant Kiwi scratchie game using Six60's image with the chance to win \$60,000.

#### *Is the advertisement targeting minors?*

The Complaints Board said Advertisement 1 was not targeting children and young people. The Board said in terms of execution, the Advertiser had used plain, monochrome imagery in the advertisement which was unlikely to have appeal to minors. The Board noted the Lotto website, while accessible to children and young people, contained prominent R18 messaging, and an 18+ age-gate for people wanting to play Instant Kiwi games online.

With regard to placement, the Gambling Advertising Code guidelines considers an advertisement to be targeting children and young people if more than 25% of the expected audience is likely to be under 18 years of age. The Complaints Board said this website advertisement would not meet this threshold.

#### *Has the advertisement been prepared and placed with a high standard of social responsibility?*

The Complaints Board unanimously agreed Advertisement 1 had been prepared and placed with a high standard of social responsibility.

The Complaints Board noted the Advertiser had provided evidence to support the care taken when evaluating the expected average audience composition prior to placement of the advertisement. The Board said the data supplied by the Advertiser from Spotify, Instagram and audience demographic information demonstrated that over 90% of Six60's core audience were over the age of 18 years old. The Complaints Board said while Six60 would have appeal to some children and young people, the Advertiser had mitigated the risk of engagement with this demographic through the placement of the advertisement on the Lotto website.

The Complaints Board said the advertisement had met a high standard of socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(a) of the Gambling Advertising Code.

### **Advertisement 2 – Six60 Facebook page**

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of Advertisement 2 was Six60 is promoting the Instant Kiwi scratchie game with the band's image for a chance to win \$60,000. The advertisement also highlighted the charities who would benefit from sales of the scratchie game.

#### *Is the advertisement targeting minors?*

The Complaints Board confirmed the Advertiser had used plain, monochrome imagery in the advertisement which was unlikely to have appeal to minors. The Complaints Board noted the Six60 Facebook page states "Must be 18+ to participate."

The Complaints Board noted the placement of the advertisement on Six60's Facebook page. The Complaints Board confirmed Facebook's terms and conditions have a minimum age for users of 13 years. The Advertiser had provided evidence confirming that 92% of the audience on the band's Facebook page at the time of the promotion were over 18 years of age. The Board noted under the Code it was required to consider the expected average audience at the time the advertisement appeared. The Complaints Board said placement on Facebook meant

children under 13 years were not likely to have access to the advertisement and the data provided by the Advertiser confirmed that engagement with young people via the Six60 Facebook page was low.

*Has the advertisement been prepared and placed with a high standard of social responsibility?*

The Complaints Board unanimously agreed Advertisement 2 had been prepared and placed with a high standard of social responsibility.

The Complaints Board agreed the choice of medium was very important in determining whether an advertisement was targeting children or young people. The Board said any risk of appeal to minors of Six60 in an Instant Kiwi game had been mitigated by the Advertiser's effort to target adults in the presentation and placement of the advertisement.

The Complaints Board said the advertisement had met a high standard of socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(a) of the Gambling Advertising Code.

### **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](http://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 advertisement featuring well-known Kiwi band, Six60, appears on Lotto's Instant Kiwi page as 'Scratchie of the Summer' and the actual Instant Kiwi scratch cards with Six60's photograph on them, are available to purchase at Lotto outlets. It was also promoted on Six60's Facebook page.

We believe this advertisement targets young people as Six60 are celebrities and have a large fan base of young people aged under 18 years. Comments on their Facebook page indicate that many others agree.

This breaches Rule 1 (a) of the Code which states under Guideline 2:

"The presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people. For example, the following advertisement content may appeal;

- Animation, bright colours, toys, music, presence of children or young people, animals, cartoons, play scenes / playgrounds, characters e.g. Santa, Easter Bunny, super heroes, sports stars or celebrities.

### Appendix 2

#### RESPONSE FROM ADVERTISER, LOTTO NEW ZEALAND

Thank you for your letter dated 1 February regarding the complaint to the Advertising Standards Authority (ASA) with regards to material relating to Instant Kiwi's \$3 SIX60 Scratchie.

Following the complaint referred to in your letter, you have requested us to confirm whether we wish to settle or defend the complaint. Following heightened media coverage regarding the band partnering with a gambling product, Lotto NZ agreed to remove the Six60 scratchie from sale after a request from Six60. As of Friday 29 January 2021, all Six60 tickets were withdrawn from stores and the online marketing detailed in the preceding points was removed. As a result, we consider this matter settled.

However, we do not agree with the complainant, who believes Lotto NZ has breached Rule 1A of the Gambling Advertising Code which states that "Gambling advertisements must not target children or young people". We do not consider that Lotto NZ's Six60 Instant Kiwi digital marketing, Facebook advertising or any other element of Lotto NZ's advertising relating to the Six60 Instant Kiwi Scratchie was in breach of this Rule. Please find our detailed response outlined below.

We note that in determining whether our advertisements target "children and young people", the ASA will have regard to the context of the advertisement and the following criteria:

1. Is the nature and intended purpose of the activity or product being promoted principally or generally appealing to children or young people,
2. Is the presentation of the content (colours/themes/wording and language used) appealing to children or young people; and

3. Is the expected average audience at the time or place the advertisement appears to include a “significant proportion of children and/or young people”.

We will address each of these aspects in turn, however, would like to first provide a summary of background and additional context for the information of the Complaints Board.

### **Background and context:**

In early 2020 Universal Music and Lotto NZ partnered to develop an Instant Kiwi Scratchie ticket for Six60 as part of the campaign surrounding the launch of their film. As part of our due diligence process, we reviewed Six60’s audience data to ensure their core audience profile was aged 18+, in line with both Lotto NZ’s internal Harm Minimisation guidelines and ASA standards. Following this review, the ticket concept and creative marketing material, with supporting demographic data, was put through our internal Harm Minimisation process for Committee approval to proceed with development. Before approval was provided, Lotto NZ’s Harm Minimisation Committee required confirmation of the following information:

- Review of Six60’s target/average audience to ensure it was aged 18+. Data provided from Spotify, Instagram and audience demographic information confirmed that over 90% of Six60’s audience was aged over 18. Please see appendix.
- All creative, advertising and promotion would be clearly advertised with prominent R18 messaging.
- Lotto NZ’s agreement with Six60 needed to include a clear obligation on Six60 to also ensure any promotion of the ticket across their channels would be targeted to those aged over 18.

On Sunday 22 January 2021 Lotto NZ launched the new Six60 Instant Kiwi ticket. The ticket was promoted on the Instant Kiwi page on our website, mylotto.co.nz, and by both Six60 and Instant Kiwi on our respective Facebook pages. All of this advertising clearly and prominently featured R18 messaging.

### **Detailed consideration of ASA criteria**

We would like to specifically address each of the criteria the ASA considers with respect to a Rule 1A complaint. This is detailed below:

#### **1. Nature and intended purpose of the activity or product**

As an age restricted product, at all times Lotto NZ is focused on minimising the risk of underage or problem gambling associated with this product. In line with this, Lotto NZ agreed with Six60 that all advertising to promote the Instant Kiwi SIX60 Scratchie would target a broad adult audience, who we understand to be primarily over the age of 18 based on the data provided. Lotto NZ had no intention of targeting children or young persons as defined in the Code. This is clear from the written agreement we had in place with Six60 to ensure any promotion they undertook regarding the ticket should “not actively promote the Game to any person/s under the age of 18”.

#### **2. Presentation of the Content**

All Instant Kiwi in-store marketing has a clear visual R18 reference and all retailers are trained and tested for compliance that Instant Kiwi tickets are not allowed to be sold to anyone under 18 years of age.

Creatively, we worked hard to ensure the imagery and visuals for both the ticket and advertising materials were targeted to an older audience, using darker colours and a standard promotional image of the band.



While we cannot restrict people under 18 years from visiting [mylotto.co.nz](http://mylotto.co.nz) due to it being a public website, we ensure that our Instant Kiwi web pages have strong R18 references.



#### What is Instant Kiwi?

Instant Kiwi offers fun and exciting instant win games for those aged over 18 years of age.

We have a variety of Instant Kiwi games available in store and online. Some games offer a quick thrill and some offer a longer play experience, but all Instant Kiwi games offer you the chance to win in an instant!

#### How do I win?

Both Instant Kiwi tickets purchased in-store and online are games of chance. The outcome of a ticket is determined at the time of purchase and is not affected by the skill or judgement of the player.

### Lotto NZ Instant Kiwi Facebook page

Lotto NZ Instant Kiwi Facebook page has an 18+ filter, which prevents anyone under the age of 18 from viewing the content. In addition to this, we only target boosted Facebook messages to an audience of those aged 25+.

Home		
Page Visibility	Page published	Edit
Visitor Posts	Choose who can publish to your Page timeline.	Edit
Post and Story Sharing	Post sharing to Stories is On	Edit
Messages	People can contact my Page privately.	Edit
Tagging Ability	Only people who help manage my Page can tag photos posted on it.	Edit
Others Tagging this Page	People and other Pages can tag my Page.	Edit
Country Restrictions	Page is only shown to people in New Zealand	Edit
<b>Age Restrictions</b>	Page is only shown to people over 18 years of age.	Edit
Page Moderation	No words are being blocked from the Page.	Edit
Profanity Filter	Set to strong	Edit
Similar Page Suggestions	Choose whether your Page is recommended to others	Edit
Page Updates	Page posts are automatically published when you update Page info, reach milestones, receive reviews and more.	Edit
Post in Multiple Languages	Ability to write posts in multiple languages is turned off	Edit
Translate Automatically	Your posts may show translations automatically for people who read other languages.	Edit
Comment Ranking	Most recent comments are shown for my Page by default.	Edit
Content Distribution	Downloading to Facebook is allowed.	Edit
Download Page	Download Page	Edit
Merge Pages	Merge duplicate Pages	Edit
Remove Page	Delete your Page	Edit

Additionally, Six60's Facebook profile audience data at the time the Scratchie was launched in January 2021 (see appendix) demonstrates that 92% of their audience is 18+. Their Facebook post promoting the ticket included clear reference that individuals must be aged 18+ to participate.



### 3. Expected average audience

As detailed earlier in this letter, we completed due diligence research prior to commencing any conceptual development or production of the Instant Kiwi SIX60 Scratchie. This research, which we carried out prior to commencing advertising, focused on data directly from Six60's Instagram and Spotify accounts and clearly demonstrates that over 90% of Six60's audience is aged 18+, with a core audience profile of 18-44.

Please see appendix for Six60 audience data both prior to the decision to develop the Instant Kiwi ticket and at the time of launch in January 2021. This data includes Six60's Spotify, Instagram and Facebook audience profiles.

There were a range of other factors that gave us confidence the ticket would primarily appeal to and be targeted at an adult audience in line with ASA standards. This included:

- The fact that Six60's film, *'Till the Lights go Out'*, was rated 'M', indicating the content was meant for a mature audience.
- The band members being aged in their mid- thirties, combined with clear data (as detailed above and attached) showing a strong appeal amongst those aged 18+.

If you have any questions regarding the data included in this response or any further questions, please do not hesitate to get in touch.

We thank you for the opportunity to respond to this complaint.