

COMPLAINT NUMBER	21/169
ADVERTISER	Beam Suntory
ADVERTISEMENT	Beam Suntory Out of Home
DATE OF MEETING	28 April 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a billboard advertisement for Jim Beam Bourbon Whiskey mixed with Zero sugar Cola. The Board said the advertisement was not misleading and was not directed at minors.

Advertisement

The Beam Suntory billboard advertisement showed a photo of a can of “Jim Beam Bourbon Whiskey mixed with Zero sugar Cola”. Above the can was the text “Zero sugar. Zero Compromises”.

Summary of the Complaint

The Complainant was concerned about the location of the advertisement and that the alcohol content of the product was not mentioned in the advertisement.

Issues Raised:

- Social Responsibility
- Truthful presentation
- Alcohol advertising should not be directed at Minors

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said it was not misleading and had been appropriately placed. The Advertiser said the advertisement had approval from the Liquor Advertising and Promotion Pre-vetting Service (LAPPS).

Relevant ASA Codes of Practice

The Acting 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 (h): Alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading.

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.

NB: A new alcohol code, the Alcohol Advertising and Promotion Code, came into force on 1 April 2021 for new advertisements and on 1 July 2021 for all alcohol advertisements. The Complaints Board considered this complaint under the previous code, the Code for Advertising and Promotion of Alcohol, as this advertisement was published before 1 April 2021.

Complaints Board Discussion

The Acting Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Code for Advertising and Promotion of Alcohol. 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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Jim Beam has a sugar-free pre-mix alcoholic beverage available.

Was the advertisement misleading?

The Complaints Board said the advertisement was not misleading. The Board said it is not a requirement in the Code for alcohol advertisements to specifically display the alcohol content of the product. The Board said Jim Beam is a well-known alcohol brand and the advertisement included the word "whiskey" on the product. Most consumers would know that whiskey is an alcoholic spirit and so would not be misled about the alcoholic nature of the product.

Was the advertisement directed at an adult audience?

The Complaints Board said the advertisement was directed at an adult audience, both in content and placement.

The Complaints Board said the content of the advertisement was directed at an adult audience and did not have strong or evident appeal to minors. The Board noted the advertisement

showed a photo of a can of Jim Beam Bourbon Whiskey mixed with zero sugar cola. The Board also noted that the “zero sugar” message would not have particular appeal to children and young people.

The Complaints Board considered whether the placement of the advertisement was directed at either adults or minors and whether the expected average audience of the advertisement would include a significant proportion of children or young people.

The Board noted that the advertisement was located in central Christchurch. Although it would likely be seen by children and young people, there was no evidence that children and young people would make up 25% or more of the audience. It also noted the comment from the Advertiser, that the advertisement was located 700m from the nearest school, which is further away than the required minimum distance of 300m.

The Complaints Board said the height of the billboard did not alter its view that the advertisement was directed at an adult audience.

Did the advertisement observe a high standard of social responsibility?

The Complaints Board said the advertisement did observe a high standard of social responsibility. This is because it was not misleading and the content and placement of the advertisement was directed at adult audiences.

The Complaints Board said taking into account context, medium, audience and product, the advertisement was not in breach of Principle 1, Guideline 1(h) or Principle 3 of the Code for 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
 3. Response from Media
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Appendix 1

COMPLAINT

I have recently contacted Consumer NZ regarding a large double billboard advertising Jim Beam bourbon whiskey, seen and photographed by myself in central Christchurch on 11th February 2021.

Consumer's advice was to read the Advertising Standards Authority's Code for Advertising and Promotion of Alcohol, also the Children and Young People section, and then to contact you if I believed any of the Guidelines were relevant to my concerns. Having read the Code prior to 1st April and now the current Code from 1st April 2021, I believe the issues are definitely applicable.

My concerns are as follows:

The billboard you will note is at a very low street level;
It is situated adjoining a block of shops including a cafe;
Located in a very busy street with traffic lights nearby;
and most tellingly, contains no reference at all to the alcohol content in the can.

Unfortunately I cannot recall the name of the street, but in the photo, you will recognise the Cashel Street sign on the intersection.

The main issues are that at this location, the height of the two billboards are prominently displayed for children, young people and others to view. They are very close to the cafe seating, the footpath and close to the street where traffic stops at the lights.

But where is the alcohol content mentioned? Nowhere on the board, not even in fine print. Yes I did look closely. I feel the "Zero Sugar" label, even if true, is absolutely misleading as the intention seems to be to divert the mind from the alcohol aspect and to try to capitalise on the zero/low sugar claims currently on trend. Guideline 1 (h) states:

"Alcohol advertising and promotion shall not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. Obvious hyperbole, identifiable as such, is not considered to be misleading". Therefore my contention is that the visual presentation contains a glaring "omission". I do not agree that this could be classed as a hyperbole, even though it could be argued as such. This advertisement has deliberately and surreptitiously avoided placing any reference to the alcoholic percentage at all, focussing instead on the zero sugar feature in bold print.

A replica Jim Beam advertisement that I observed, which was situated near a railway crossing in the Addington area of Christchurch was extremely noticeable by its height and location. In fact, this large billboard was so distinctly obvious that it caught my attention immediately, being so close to a main arterial route and could, in my view, be classed as a visual distraction to

motorists. Maybe that is an issue to be taken up with Christchurch City Council. I hope I have explained my concerns clearly.

Appendix 2

RESPONSE FROM ADVERTISER, BEAM SUNTORY

We wish to defend the advertising as laid out in the recent complaint (21/169). It is absolutely not the intention of Beam Suntory to mislead any consumers as to the contents of any of our products.

This advertising has been through rigorous processes, including LAPPS approval, to ensure the messaging and positioning of the advertisement does not violate ASA standards.

1. Position of street poster

- a. Beam Suntory takes every effort with our media partners to ensure all outdoor sites are selected based on their reach against an 18+ audience.
- b. Rocket Media (agency) has confirmed that no placement of street posters is within 300m of a school or university and no placement of billboards is within 500m of a school or university.
 - i. Rocket have very strict parameters around all media placements for Jim Beam and all Beam Suntory brands, and this is always very clearly outlined in all briefs to all partners and suppliers. Upon booking, all placements are then checked that they meet and abide by ASA standards.
 - ii. This particular site is 700m from the nearest school.
- c. Shout media street posters are, by nature, at street level. These are often displayed in high foot traffic areas near bars and restaurants. They are utilised within ASA guidelines by several different alcohol companies to share branded messages.
- d. This outdoor campaign reached 349,579 people 20+. 84% of people reached via Jim Beam campaign billboards are 18+ (source: Calibre).

2. Campaign

- a. This particular campaign has been run throughout summer with the intention to show existing RTD consumers that Jim Beam has a zero sugar option available, in line with consumer trends.
- b. It is designed to highlight this zero sugar feature, but is certainly not intended to be misleading on the alcoholic content of the beverage. The words 'Bourbon Whiskey' are prominently displayed on the front of the can.
- c. The can has been creatively cropped in line with our global creative as a design decision, not to hide any part of the can.
- d. This campaign was live until March 2021, however we intend to reutilise the creative again in Summer 2021/2022. This campaign has reached 2.9M consumers across billboards, social, radio and this is the first complaint of this nature we have received.

3. Also attached to this email

- a. LAPPS approval for campaign

Appendix 3

RESPONSE FROM SHOUT MEDIA

The site is ASA compliant i.e. 300m from a school. It is located in the city centre where the audience is almost exclusively adult.

Note the comments re the height of the sites has nothing to do with being aimed at a younger audience. All of our sites are low to the ground so installers can easily access. Lastly any reference to the alcohol content would need to be referred to the client or creative agency.