

COMPLAINT NUMBER	21/315
ADVERTISER	Lotto NZ
ADVERTISEMENT	Kiwis helping Kiwis, Television
DATE OF MEETING	6 July 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a television advertisement for Lotto NZ, which said 100% of profits go back to the community. The Complaints Board said the reference to profits would generally be understood to be after the deduction of operating costs. It noted Lotto NZ are required to comply with the Gambling Act 2003 and must apply to the Minister of Internal Affairs for any retention of profit for operation expenditure.

Advertisement

The Lotto NZ television advertisement shows images of community causes benefiting from Lotto grants. The voiceover says, “Ever since the first draw back in ’87, 100% of Lotto NZ profits have gone back to the community. That’s almost \$5 billion, helping thousands of great causes right across Aotearoa. So every time you play a Lotto NZ game, someone wins! Now that’s Kiwis helping Kiwis.”

Summary of the Complaint

The Complainant was concerned the advertisement is misleading to state 100% of profits go back to the community when financial statements show \$20,108 was retained in equity.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement saying the “Kiwis helping Kiwis branding focuses on communicating to consumers that “100 percent of Lotto NZ profits are returned to Kiwi communities - \$4.9 billion in the past 33 years. It said under the Gambling Act 2003, all profits generated are required to be distributed to the NZ Lottery Grants Board unless a retention is approved by the Minister of Internal Affairs. It said profit retention is occasionally required to fund essential upgrades such as replacing technology infrastructure. The \$20.1 million retention was approved in the 2019/20 financial year.

Relevant ASA Codes of Practice

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

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 21/08 which was not upheld and 19/291 which was upheld.

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

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

Decision 21/208 concerned a print advertisement for the Trusts which claimed that 100% of profits go back into West Auckland. The Complaints Board did not uphold the complaints because it considered most consumers would understand that would mean profits after the deduction of operating costs. The Complaints Board also noted that independent auditing ensured the Trusts complied with legislative requirements about profit distribution.

Decision 19/291 concerned a print advertisement for the Trusts explaining where profits are invested. The advertisement included a graph showing a figure of 47% and the wording “giving back now.” The Complaints Board upheld the complaint because the Advertiser had not provided sufficient substantiation to support the claim.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Advertising Standards 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, which in this case is:
 - Context: A crown entity established for the purposes of raising money for community activities and projects
 - Medium: Television
 - Audience: Television viewers
 - Product: A lottery gambling game

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was it is a brand advertisement highlighting how Kiwis are helping Kiwis by having 100% of profits from Lotto going back into Kiwi communities.

Is the advertisement likely to mislead, deceive or confuse consumers?

The Complaints Board said the Advertiser had made a factual claim in the advertisement that 100% of profits had gone back into the community, which required substantiation. The Board noted the Complainant had challenged this claim by highlighting that in the 2019/2020 financial year, \$20.108 million was retained in equity.

The Complaints Board agreed the recognised definition of the word “profit” was:

“The financial benefit realised when revenue generated from a business activity exceeds the expenses, costs, and taxes involved in sustaining the activity in question.”

The Complaints Board agreed the substantiation provided by the Advertiser explained the retention of some earnings to pay for business operations. The Complaints Board agreed that the \$20.01 million allocated to fund the upgrade and replacement of technology infrastructure was an operational expense which, in keeping with the definition of “profit”, would be deducted before calculating the net profit.

The Complaints Board noted that under the Gambling Act 2003, profits are required to be distributed to the community unless there is an exception approved by the Minister of Internal Affairs. In the 2019/2020 financial year the Minister had approved the retention to fund a capital business project.

The Complaints Board ruled the advertisement was not likely to mislead or deceive consumers and was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards 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. 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 a complaint about the Lotto TV commercial which claims that “100% of our profits go back to the community”.

In fact \$20.108 million is retained in equity. Their equity increased from \$33.513 mill to \$53.416 mill.

Can you please act on this complaint by email.

Appendix 2

RESPONSE FROM ADVERTISER,

RE: Lotto NZ Television – Complaint 21/315

Thank you for your letter dated 16 June regarding the complaint to the Advertising Standards Authority (ASA) with regards Lotto NZ's 'Kiwis helping Kiwis' television commercial.

Following the complaint referred to in your letter, you have requested comments from Lotto New Zealand in regards to:

- Principle 2, Rule 2(b) of the Advertising Standards Code

Lotto NZ believes that our advertising for our Kiwis helping Kiwis brand complies with the Advertising Standards Code and we intend to defend this complaint. Please find our detailed response below.

Background and context:

Lotto NZ exists to generate essential funding for New Zealand communities – it's why we do what we do. Our core purpose is to provide safe gaming that allows New Zealanders to play and win while contributing money back to New Zealand communities. Each year, Lotto NZ transfers 100 percent of profits to the New Zealand Lottery Grants Board, who distribute it back to Kiwi communities through lottery grants.

Over the past 33 years, Lotto NZ has returned more than \$4.9 billion to New Zealand communities, via. the Lottery Grants Board. Each year around 3,000 charities and organisations benefit from this funding, allowing them to make a meaningful difference in the lives of Kiwis in their communities.

Given the intangible nature of our games, having a strong brand that makes New Zealanders feel good about playing our games is an essential part of our business – and a core part of this is reminding players about the important contribution they are making to New Zealand communities each time they choose to play a Lotto NZ game. To help support this and raise awareness of our community purpose, Lotto NZ launched the 'Kiwis helping Kiwis' brand in June 2019 with the key focus of communicating the fact that “100 percent of Lotto NZ profits are returned to Kiwi communities”. This messaging is included in all Kiwis helping Kiwis communications, including the television commercial referenced in this complaint.

Principle 2, Rule 2(b): Truthful presentation – advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge.

Lotto NZ believes that the Kiwis helping Kiwis television commercial referenced by the complainant was not in breach of Principle 2 of the Advertising Standards Code.

Under the Gambling Act 2003, all profits generated by Lotto NZ are required to be distributed to the NZ Lottery Grants Board each year unless a retention is approved by the responsible Minister – the Minister of Internal Affairs. Profit retentions are required occasionally to allow Lotto NZ to fund essential upgrades which cannot be funded through our standard operating budget – for example, replacing our technology infrastructure. On these occasions, Lotto NZ is required to request a profit retention in writing from the Minister of Internal Affairs, including supporting information regarding why the retention is required and how the funds will be used to support the ongoing operations of our business. Only if a retention request is approved by the Minister of Internal Affairs can this amount be used to fund capital business projects.

In the 2019/20 financial year, Lotto NZ was approved to retain \$20.1 million to fund the upgrade and replacement of technology infrastructure. Without this retention, Lotto NZ would not be able to fund this capital investment, which will enable the business to continue to operate successfully and in turn, generate essential funding for New Zealand communities.

It is important to remember that while an approved profit amount is retained to fund these costs, all withheld profits must be used for the sole purpose of enabling the ongoing operation of Lotto NZ's business, to ensure we continue to maximise funding for the benefit of community groups and organisations around the country. As a result, retentions cycle back into profits as these funds are invested into capital for the sole purpose of operating Lotto NZ's business.

Lotto NZ cannot choose to retain profit without explicit approval from the responsible Minister, nor can profits be distributed to anyone other than the NZ Lottery Grants Board, who allocate the funding to around 3,000 community groups and organisations each year.

If you have any further questions, please do not hesitate to get in touch.
We thank you for the opportunity to respond to this complaint.

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

We defer to the advertiser, New Zealand Lotteries, to respond to this complaint regarding details of the distribution of lottery community grants from profits made.