

COMPLAINT NUMBER	21/444
ADVERTISER	Lion NZ Limited
INFLUENCER	@hannahlaity
ADVERTISEMENT	Wither Hills, Instagram
DATE OF MEETING	12 October 2021
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Wither Hills advertisement promoting a luxury weekend holiday which appeared on the personal Instagram account of the influencer @hannahlaity. The Complaints Board accepted the advertisement was targeting an adult audience based on the audience information provided by the Advertiser and agreed that the influencer was not likely to be popular with minors or have particular appeal to those under 18 years.

Advertisement

The Instagram post by @hannahlaity promotes the "Share Beautiful" competition by Wither Hills. The caption flags the post as an advertisement and begins, "Wine with the girls, yes please!". The caption then highlights that the Wither Hills Single Vineyard collection is "delicious", explains the giveaway and directs the user to Wither Hills for more information. The caption states that entrants must be 18 or over. The accompanying image shows three women holding glasses of wine together and smiling. Two bottles of Wither Hills wine are placed to the side.

Summary of the Complaint

The Complainant was concerned the advertisement promoted alcohol by way of a trip/give away prize. The Complainant was concerned the Instagram advertisement did not contain safe drinking messaging the way other alcohol advertising does. The Complainant is also concerned about the potential use of heroines of minors in alcohol advertising and the age of people appearing in the post.

Issues Raised:

- Social Responsibility
- Targeting and Placement of Alcohol Advertising

Summary of the Advertiser's Response

The Advertiser said it engaged a number of influencers to post advertisements on their Instagram accounts promoting a competition for over 18 year olds to win a luxury weekend away. The Advertiser confirmed that because personal Instagram accounts cannot be age restricted, it ensured the audience composition of the account would be targeted at adults via usage age statistics. This demonstrated that 95.9% of the audience are expected to be adults, well above the 80% requirement of Rule 1(a). The Advertiser said this also demonstrated the influencer was not popular with minors or had particular appeal to minors. Regardless, the Advertiser said being a partner of an All Black was not likely to make the influencer a heroine of the young. The Advertiser said the influencer was and appeared to be over the age of 25

and was demonstrating age-appropriate behaviour. The Advertiser said there was no sponsorship arrangements.

Summary of the influencer Response

@hannahlaity responded with the audience composition showing that 95.9% of her followers were over the age of 18 years. The influence also added a “drink responsibly” message to her post.

Relevant ASA Codes of Practice

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

ALCOHOL ADVERTISING AND PROMOTION CODE

Principle 1 Social Responsibility: Alcohol Advertising and Promotion must be prepared and placed with a high standard of social responsibility to consumers and society.

Rule 1(a) Targeting Adults – Timing and placement: The timing and placement of Alcohol Advertising and Promotion must target Adult audiences.

Guideline 3 - Age-restricted media

Alcohol Advertising and Promotion may be placed in age-restricted media only when appropriate tools are used to select Adult audiences and/or access is restricted to Adults only.

- i. Tools to select Adult audiences may include, but are not limited to:
 - a) selecting Adults using the registered age or date of birth of the device owner and/or the logged-in user;
 - b) platforms with terms and conditions that require Alcohol Advertising and Promotion to be restricted to Adults;
 - c) selecting nominated sites or pages based on content or audience data that demonstrates viewing by Adult audiences or exclusion of Minors.
- ii. Tools that create a barrier to entry for Minors may include, but are not limited to:
 - a) age-gated access to online Alcohol Advertising and Promotion on brand websites, brand social media pages or apps where visitors are required to enter a date of birth before accessing Alcohol Advertising and Promotion;
 - b) age verification for entry to online Alcohol retail sites to confirm visitors are 18 years of age or over;
 - c) age verification required for entry into R18+ events and cinema movies classified R18.

Guideline 4 - Audience composition

Where tools are not available to select Adult audiences and/or restrict access to Adults only, Alcohol Advertising and Promotion may be placed in other media only when recognised industry-standard audience composition data are available and 80% or more of the expected average audience are Adults. These may include, but are not limited to:

- i. viewing, reading or listening audience composition data;

- ii. physical premises where entry to a designated supervised area which Minors are permitted to enter, providing they are accompanied by a parent or guardian.

Rule 1(b) Targeting Adults – Content: The content of Alcohol Advertising and Promotion must target Adults.

Guideline 8 - Influencers

Influencers with Alcohol Advertising and Promotion content must be at least 25 years of age and appear to be at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older. Placement of Alcohol Advertising and Promotion with influencers is only permitted if Rule 1 (a) Guidelines 3 or 4 can be met.

Principle 3 Alcohol Sponsorship Advertising and Promotion: Alcohol Sponsorship Advertising and Promotion must target Adults and primarily promote the Sponsored Party.

Rule 3 (a) Targeting Adults: Alcohol Sponsorship Advertising and Promotion must target Adult audiences.

Rule (b) Content: Alcohol Sponsorship Advertising and Promotion must only feature the Alcohol Advertiser and the sponsorship in a subordinate manner.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/076, which was Upheld in Part and 19/052, which was Settled.

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

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

Decision 18/076 concerned an Instagram advertisement showing rugby players Beauden Barrett and Damian McKenzie participating in a Moët champagne pouring competition at the ASB Classic tennis tournament. The post appeared on the Advertiser and event organisers' Instagram accounts as well those of as Beauden Barrett and Damian McKenzie. The Complainant was concerned the advertisement portrayed heroes of the young promoting alcohol in an unrestricted medium as well as Damian McKenzie being under 25 years of age.

The Chair of the Complaints Board noted the co-operative engagement with the ASA process from Moët Hennessy and Tennis Auckland. She said taking into account the self-regulatory action to promptly remove the advertisement and the undertaking, through education, to minimise the risk of a re-occurrence and another Code breach the complaint could be considered settled.

Decision 19/052 concerned a multi-media advertising campaign "Beer the Beautiful Truth", run by the Brewers Association of New Zealand. The campaign featured New Zealand celebrities, including Eric Murray talking about how beer is manufactured. Amongst other issues, the Complainants were concerned that Eric Murray was a hero of the young and implied celebrating a social occasion was dependant on alcohol.

The Complaints Board Upheld the complaints in Part, agreeing that Eric Murray would be considered a hero of the young and should not have been promoting alcohol products in a non-restricted medium.

Complaints Board Discussion

The Acting Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Alcohol 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, which in this case is:
 - Context: A social media alcohol advertisement with a give-away competition
 - Medium: Instagram
 - Audience: Followers of Instagram influencer
 - Product: Wither Hills wine

Preliminary Matter

The Complaints Board noted the Complainant was concerned the advertisement did not contain a responsible drinking message. The Board confirmed a responsible drinking message in alcohol advertising is not a requirement under the Alcohol Advertising and Promotion Code or the Sale and Supply of Alcohol Act. Many alcohol advertisements do carry this message, but it is a voluntary industry initiative. Under the ASA Code, the content and placement of alcohol advertising and promotion must support responsible consumption. The Complaints Board noted that the requirement to support responsible consumption did not necessarily mean an explicit responsible drinking message was required, as the consumer takeout depended on the advertisement as a whole, but acknowledged the influencer had added a "drink responsibly" message to her post.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement would be it was a competition promotion from Wither Hills wine, offering a luxury weekend away and encouraging the influencer's followers to tag their friends.

Is the advertisement targeting an adult audience in terms of timing and placement?

The Complaints Board noted the advertisement appeared on the personal Instagram page of influencer, @hannahlaity, which is not age restricted. While Instagram followers are required to be 13 years of age before joining the platform, there are no tools available to age restrict the audience on a personal Instagram account. Therefore, the Board noted that alcohol advertising and promotion may only be placed in unrestricted mediums when recognised industry-standard audience composition data is available and 80% or more of the expected average audience are adults.

The Complaints Board noted the Advertiser and influencer had provided audience composition data which demonstrated that 95.9% of the audience for @hannahlaity were adults. The Complaints Board agreed the substantiation was sufficient to show the advertisement was targeting adults and it was not in breach of Rule 1(a) of the Alcohol Advertising and Promotion Code.

Is the advertisement targeting an adult audience in terms of content?

The Complaints Board said the advertisement content showed adult women who were and appeared to be over 25 years of age. The Board said those featured in the advertisement were shown to be drinking responsibly and in moderation.

The advertisement indicates that Terms and Conditions apply and that these can be viewed on the Wither Hills website, <https://witherhills.co.nz/pages/share-beautiful-tcs>. Included in the

terms and conditions on the age-restricted website is confirmation that “Entry is open to residents of New Zealand who are 18 years and over.” The Board said the competition prize was unlikely to have appeal to minors.

The Complaints Board said the advertisement content was aimed at adults and was not in breach of Rule 1(b) of the Alcohol Advertising and Promotion Code.

Is the influencer considered to be popular with or have particular appeal to minors?

The Complaints Board did not consider the influencer @hannahlaity was popular with or had particular appeal to minors. The Board said the audience composition showed under 5% of the total audience were under 18 years of age. The Board also noted that the fact the influencer was the partner of an All Black did not mean she would automatically be considered to have particular appeal to minors.

The Complaints Board said the advertisement was not in breach of Rule 1(b) of the Alcohol Advertising and Promotion Code.

Is the advertisement alcohol sponsorship advertising?

The Complaints Board agreed the advertisement did not fall within the definition of sponsorship advertising. The Complaints Board noted the Advertiser had confirmed the engagement with the influencer @hannahlaity to post the advertisement is not a sponsorship arrangement and neither Lion nor Wither Hills provide ongoing support or sponsorship of the influencer.

The Complaints Board ruled Principle 3, Rule 3(a) and 3(b) of the Alcohol Advertising and Promotion Code did not apply to this complaint.

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

The Complaints Board said the advertisement did observe a high standard of social responsibility. This is because the content and placement of the advertisement was directed at adult audiences and supported responsible consumption. The Complaints Board said taking into account context, medium, audience and product, the advertisement was not in breach of Principle 1, Rule 1(a) or Rule 1(b) of the Alcohol Advertising and Promotion 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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Influencer
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Appendix 1

COMPLAINT

Connected to a complaint I submitted prior to this, in relation to influencer Daisy Dagg, I feel this social advertisement could be in breach of the advertising standards. This is a paid partnership between Wither Hills winery, and Hannah here promotes the chance to be in to win a getaway. My initial concern was around the lack of any responsible drinking message - this was the same concern raised in my earlier complaint around Daisy Dagg. However, given that both of these women are reasonably well known for their famous ex, and current All Black husbands, I do have concern that Wither Hills is flirting with the use of heroines in their advertising, with some of the woman pictured across both complaints not clearly looking older than 25 years (although I'm sure they are). The advert appears to have been posted 13 2 August. As stated in my other complaint it would be good to clarify some of the concerns raised above as the promotion of alcohol becomes more common place across social media, with a far higher chance of this advertising being seen by minors.

Appendix 2

RESPONSE FROM ADVERTISER, LION NZ LIMITED

RESPONSE TO COMPLAINT 21/443 AND COMPLAINT 21/444

1. We act for Lion NZ Limited ("**Lion**") in relation to Lion's advertising for Wither Hills on the Instagram accounts @daisydagg and @hannahlaity ("**Advertisements**") that are the subjects of the above complaints ("**Complaints**").
2. Lion prepares all of its advertisements with significant care to ensure that they comply with all legal and advertising standards. This includes ensuring all advertisements are legally compliant, in particular to ensure advertisements are targeted at appropriate audiences and to ensure it is clear to consumers that social media posts by third parties are advertisements.
3. Lion takes all complaints received very seriously and wishes to thank the Complaints Board for the opportunity to respond to these Complaints.
4. We set out Lion's response to the Complaints below.

The Advertisements

5. Lion owns and distributes Wither Hills wines. Lion is currently running the #ShareBeautiful competition on social media, which allows anyone in New Zealand over 18 to enter a competition to win a paid luxury weekend away for two, to a value of up to \$8,000 ("**Competition**").
6. To promote the Competition, Lion engaged a number of influencers to post advertisements on their Instagram accounts.

7. On 13 August 2021, @hannahlaity posted a picture on Instagram that is an advertisement for Wither Hills Single Vineyard collection, promoting the wine and the Competition. The Advertisement provides that an entrant must be over 18 to enter. A copy of this Advertisement is included in **Annexure A** to this response.
8. Similarly, on 27 August 2021, @daisydagd posted three pictures that are an advertisement for Wither Hills promoting the wine and the Competition. The Advertisement provides that terms and conditions apply. A copy of this Advertisement is included in **Annexure B** to this response.

The Complaints

9. Complaint 21/433 alleges that the Instagram post by @daisydagd promotes alcohol without any safety messaging around responsible drinking and outside of the usual alcohol advertising standards. The complainant submits that influencer advertising should be required to display any required messaging around responsible drinking just like any other channel, and requests that the ASA closes any "loophole" whereby influencers might be exempt from the Alcohol Advertising and Promotion Code ("**Alcohol Code**").
10. Complaint 21/444 raises the same concerns about the Instagram post by @hannahlaity, and in addition alleges that:

given that both of these women are reasonably well known for their famous ex, and current All Black husbands, I do have concern that Wither Hills is flirting with the use of heroines in their advertising, with some of the [sic] woman pictured across both complaints not clearly looking older than 25 years (although I'm sure they are).

[...]

As stated in my other complaint it would be good to clarify some of the concerns raised above as the promotion of alcohol becomes more common place across social media, with a far higher chance of this advertising being seen by minors.

11. Lion has been asked to address Principle 1, Rule 1(a), Rule 1(b), Principle 3, Rule 3(a) and Rule 3(b) of the Alcohol Code.
12. Principle 1 provides that "Alcohol Advertising and Promotion must be prepared and placed with a high standard of social responsibility to consumers and society." The relevant rules are:

Rule 1(a) Targeting Adults – Timing and placement

The timing and placement of Alcohol Advertising and Promotion must target Adult audiences.

Rule 1(b) Targeting Adults – Content

The content of Alcohol Advertising and Promotion must target Adults.

13. Principle 3 provides that "Alcohol Sponsorship Advertising and Promotion must target Adults and primarily promote the Sponsored Party." The relevant rules are:

Rule 3(a) Targeting Adults

Alcohol Sponsorship Advertising and Promotion must target Adult audiences.

Rule 3(b) Content

Alcohol Sponsorship Advertising and Promotion must only feature the Alcohol Advertiser and the sponsorship in a subordinate manner.

Lion's position

14. Lion's view is that the Advertisements are not in breach of any of the above Principles or Rules, and that there are no credible grounds on which the Complaints can be upheld.

Principle 1

15. Under Principle 1, Rules 1(a) and (b), Lion must ensure that the timing, placement and content of the Advertisements targets adult audiences.
16. The Advertisements were published on an individual (rather than business) Instagram page, which is not an age-restricted media under the Alcohol Code.¹ Guideline 4 for Rule 1(a) provides that Alcohol Advertising and Promotion may be placed in non-age restricted media only when recognised industry-standard audience composition data are available and 80% or more of the expected average audience are adults.
17. Before publishing these Advertisements, Lion sought information from @hannahlaity and @daisydag to evaluate the audience composition of the accounts and ensure that the Advertisements would be targeted at adult audiences. The usage statistics for the accounts are as follows:

@hannahlaity:

13 – 17: 4.1%
 18 – 24: 21.3%
 25 – 34: 44.6%
 35 – 44: 17.8%
 45 – 54: 8.1%
 55 – 64: 3.0%
 65+: 1.2%.

@daisydag:

13 – 17: 3.5%;
 18 – 24: 17.6%;
 25 – 34: 41.6%;
 35 – 44: 22.9%;
 45 – 54: 9.3%;
 55 – 64: 3.5%;
 65+: 1.5%.

¹ We note that Instagram's Terms and Conditions (<https://help.instagram.com/581066165581870>) restrict the platform to users 'at least 13 years old or the minimum legal age in your country to use Instagram'. Instagram does not have any terms or conditions or community guidelines that prohibit advertising alcohol products.

18. These age group statistics demonstrate that 95.9% of the audience for @hannahlaity and 96.5% of the audience for @daisydag are expected to be adults, both well above the 80% requirement.
 19. The very small proportion of minors that form part of @hannahlaity and @daisydag's audience also confirms that neither user is currently "popular with minors" or would have "particular appeal to minors" under Guideline 4 of Rule 1(b).
 20. The Complaints allege that, by way of their status as partners of current All Black Beauden Barrett and ex-All Black Israel Dagg, both women have the potential to be "heroines" of the young, or to have particular appeal to minors. With respect, Lion disagrees. While the ASA's guidance under the previous Code for Alcohol Advertising and Promotion makes it clear that All Blacks (but not necessarily retired All Blacks) will have particular appeal to minors,² the same cannot be said of individuals merely because they are partners, or a relatives, of current or ex-All Blacks.
 21. Lion respectfully submits that to make such a finding (without further compelling evidence) goes far beyond what is provided for, or ever intended by, the Alcohol Code and effectively assumes that a current or former All Black's social media following (and scope of influence) is directly replicated in the social media following of their spouse. Lion's view is that there must be more than a mere family relationship in order for a family member to appeal to minors.
 22. Further, Lion chose to work with Ms Barrett and Ms Dagg because they are not likely to be individuals that minors aspire to be or to connect with, and their content is not likely appeal to minors. Rather, as is evidenced by the usage statistics set out above, they appeal to the 25-54 market.
 23. Lion also considers that the content of the Advertisements does not have any particular appeal to minors, in line with Guideline 3 of Rule 1(b). Both Advertisements show a group of women each with a single glass of wine. The language and the imagery used would not have any particular appeal to minors, and the Competition itself is only open to those over the age of 18 (as is noted in the Advertisement posted by @hannahlaity).
- 2 Guideline 3(a), Code for Advertising and Promotion of Alcohol.
24. Further, we note:
 - (a) the Advertisements do not feature or reference Beauden Barrett or Israel Dagg. It is worth noting that when offered the opportunity for Beauden Barrett to feature in one of the Advertisements, Lion specifically directed that he was not to be included in order to ensure that the Advertisements complied with the Alcohol Code; and
 - (b) The Competition and prize is not one that would appeal to minors
 25. The Complaints also raise a concern that the women pictured in the Advertisements may appear to be under 25. Guideline 8 for Rule 1(b) provides that:

Influencers with Alcohol Advertising and Promotion content must be at least 25 years of age and appear to be at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older. Placement

of Alcohol Advertising and Promotion with influencers is only permitted if Rule 1 (a) Guidelines 3 or 4 can be met.

26. Lion confirms that both Ms Barrett and Ms Dagg are over (and both appear to be over) 25 and that their friends in the Advertisements also are and appear to be at least 25 years of age and demonstrating age-appropriate behaviour. As set out above, Guideline 4 has been met by assessing the audience data for @hannahlaity and @daisydagg.
27. Finally, while the ASA has not referenced Rule 1(c), Lion considers that the Complaints indirectly raise this Rule, which states that:

Alcohol Advertising and Promotion must demonstrate responsibility and low-risk Alcohol consumption.

28. Complaint 21/443 notes that "Influencer advertising should also be required to display any required messaging around responsible drinking just like any other channel." Lion would like to emphasise that it has complied with all applicable alcohol safety laws and guidelines in publishing these Advertisements. Under Rule 1(c), all advertisements, no matter the media, must demonstrate responsibility and low-risk alcohol consumption.
29. Lion considers that there is nothing about these Advertisements that promote unsafe or anti-social alcohol consumption. As outlined above, all women in the Advertisements have a single glass of wine each, and reference enjoying a glass of wine while catching up with friends or having delicious food. The Advertisement from @hannahlaity specifically references having a single glass of wine.

Principle 3

30. Principle 3, Rule 3(a) provides that Lion's alcohol sponsorship advertising and Promotion must only target adult audiences.
31. Rule(b) provides that alcohol sponsorship advertising and promotion must only feature the alcohol advertiser and the sponsorship in a subordinate manner.
32. Lion disagrees that the Advertisements are "Sponsorship Advertising" in the meaning of the Alcohol Code. The Alcohol Code defines Alcohol Sponsorship Advertising and Promotion as:
- any message the content of which is controlled directly or indirectly by the Alcohol Advertiser, expressed in any language and communicated in any medium with the purpose of promoting the Sponsored Party.
33. Further, Alcohol Sponsorship Agreement is defined as:
- any agreement or part of an agreement involving payment, or other consideration in lieu of payment, by an Alcohol Advertiser to support the Sponsored Party.
34. There is no further guidance on what constitutes sponsorship in the current Alcohol Code. However, we note the following:
- (a) Principle 3 states Sponsorship advertising must target Adults and primarily promote the Sponsored Party; and

- (b) the old version of the Alcohol Code provided that sponsorship advertisements should have a primary focus on the activity or the team that is sponsored, should not show product or product packaging, and should not portray consumption of alcohol.
35. Lion considers that its engagement of Ms Barrett and Ms Dagg to post the Advertisements is not a sponsorship arrangement, as it does not meet any of the above criteria. Neither Lion nor Wither Hills provide ongoing support or sponsorship to either individual and it is clear from the Advertisements that Lion is not seeking to "sponsor" or primarily promote @hannahlaity and @daisydagg. On the contrary, the Advertisements promote Wither Hills and the Competition and, in accordance with Guideline 3 of Rule 3(b), are deemed as Alcohol Advertising and Promotion.
36. Lion takes all complaints very seriously. As an alcohol retailer, Lion takes all steps to ensure it complies with the Alcohol Code. Lion has considered both Complaints and remains of the view that the Advertisements do not breach the cited sections of the Alcohol Code
37. If the Complaints Board requires any further information, Lion is happy to provide this on an urgent basis.

Appendix 3

RESPONSE FROM INFLUENCER @HANNAHLAITY

Thank you very much for your time earlier.

As discussed, I have updated the copy to include "Please drink responsibly." and I have also attached a screenshot of Instagram audience, as you can see, over 95% of my following are legally allowed to consume alcohol.

Please let me know if there is anything else I can do to assist with this matter.