

COMPLAINT NUMBER	21565
ADVERTISER	Lion NZ Limited
ADVERTISEMENT	Coruba, Catalina, Speights, Corona, Billboards
DATE OF MEETING	12 April 2022
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about two billboard sites displaying alcohol advertising. The Complaints Board said the advertisements on the two separate billboards were targeting adult audiences and complied with the high standard of social responsibility required of alcohol advertising.

Advertisement

The intersection of Green Lane West and Manukau Road has two billboard sites opposite each other. The QMS Media digital billboard displayed advertisements for Coruba rum, Catalina lager and Speights beer. The JCDecaux static billboard displayed an advertisement for Corona beer. All brands being advertised are produced, marketed or distributed by Lion NZ Limited.

- The advertisement for Coruba shows two people holding drinks and laughing at a Jamaican bar. Large text states “Best chilled” and the Coruba product and logo is visible on the right-hand side of the billboard.
- The advertisement for Catalina beer shows a stylised image of sailboats on the Auckland harbour. The Catalina logo and product image is overlaid on the image, with the text “DAY FOR IT / CRISP REFRESHING LAGER”.
- The advertisement for Speights beer shows two Speights Summit Ultra low carb lager bottles held together with large text stating “75% LESS CARBS* / CRISP & REFRESHING.” The Speights logo is visible on the right-hand side.
- The advertisement for Corona Extra shows the silhouettes of three people holding surfboards walking across the beach. Text states “FROM WHERE YOU’D RATHER BE” and shows an image of a Corona Extra bottle.

Summary of the Complaint

The Complainant is concerned an intersection in Auckland contains a digital billboard which ran three alcohol advertisements within 30 seconds as well as another static billboard with an alcohol advertisement directly opposite.

The Complainant finds it offensive these billboards are only 650 metres from a school and were showing multiple alcohol advertisements in the morning and would expect the same watershed rules as television. The Complainant said it was anti-social and irresponsible to show drinking in the morning. The Complainant said the advertisements were not targeting adults as children were likely to be travelling to school.

Issues Raised:

- Social Responsibility
- Alcohol targeting

- Alcohol Consumption
- Anti-Social Behaviour

Summary of the Advertiser's Response

The Advertiser said the digital billboard is located at a busy intersection 650 metres from a school and is therefore not caught by the bright line rule under Guideline 6 of Rule 1 of the Code for Advertising and Promotion of Alcohol (the Code). The Advertiser's media agency confirmed the audience data at the intersection under the age of 18 was 14%, meaning the Advertiser met the industry-standard audience composition with well over 80% of the expected audience being adults.

The Advertiser said there can be no credible reason for a distinction between digital and traditional billboards. If a traditional billboard which displays an alcohol advertisement 24/7 is permitted, a digital billboard in the same location which displays various alcohol and non-alcohol advertisements should also be permitted including in peak hour traffic. It said the saturation rules apply to media which has a mixture of content and advertisements and the time guidelines for television not showing alcohol between 6am-8:30pm has no equivalent for Out of Home (OOH) advertising.

A full copy of the Advertiser's response is in Appendix 2.

Summary of the Media Responses

QMS Media said they have 8 slots each week and each slot runs for 8 seconds. They don't play categories in succession, they ensure that each slot is a different category to the next, however it is possible to have more than one alcohol advertisement per rotation. When questioned about two alcohol advertisements playing consecutively the media confirmed this was due to unsold slots. The number of slots sold to alcohol brands per rotation has now been restricted to prevent this happening again.

JCDcaux said the Epsom placement ran from 6-12 December 2021 and was not running again. They provided a map of school locations to show the billboard was not within a 300 metres sightline of the main entrance to a school.

Full copies of the Media responses are in Appendix 3.

Relevant Advertising Standards Authority (ASA) Codes of Practice

The 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.

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

Rule 1(c) Alcohol consumption: Alcohol Advertising and Promotion must demonstrate responsibility and low-risk Alcohol consumption.

Rule 1(f) Violence and anti-social behaviour: Alcohol Advertising and Promotion must not, unless justifiable on educational or social grounds, contain anything that condones, or is likely to show, violent or anti-social behaviour or damage to property.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/591, which was Upheld and 21/475 which was Not Upheld.

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

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

Decision 20/591 concerned billboard advertising for the Beers at the Basin event. The Complainant was concerned about the placement of alcohol advertisements being in close proximity to several schools and school bus routes.

The Complaints Board Upheld the complaint and said the number and placement of the alcohol billboards close to a primary and two secondary schools did not meet the high standard of social responsibility required of alcohol advertising.

Decision 21/475 concerned an interscroller advertisement for Super Liquor Holdings on the Stuff website. Two Complainants were concerned the advertisement was aggressively marketing alcohol because it took three swipes to close the advertisement which could be triggering for vulnerable audiences.

The Complaints Board did not Uphold the complaints and said the advertisement used new technology which consumers could quickly scroll past when familiar with the format and the Advertiser had targeted an adult audience.

Complaints Board Discussion

The 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, which in this case is:
 - Context: Multiple alcohol advertisements at a traffic intersection
 - Medium: Digital and static billboards
 - Audience: Drivers and passengers
 - Product: Alcohol

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the billboards would be they showed imagery to promote different beer and rum brands.

The Complaints Board agreed the digital billboard would be considered in the same way as a static billboard in the sense that consumers could only look at one advertisement at a time. Some Board members considered the digital billboard format could have a higher engagement level than a single static image.

The Complaints Board confirmed the saturation guideline under Rule 1(a) of the Alcohol Advertising and Promotion Code applies to all media and states:

“The media must avoid, where possible, the impression that Alcohol Advertising and Promotion dominates their medium taking into account the context.”

While the current examples in the guideline specifically refer to broadcast content, all media platforms should consider saturation in their media placement policies.

The Complaints Board considered the billboards in turn and then discussed the combined effect of the billboards:

Digital Billboard

Does the timing and placement of the advertisements target an adult audience?

The Complaints Board said the digital billboard showing advertisements for Coruba rum, Speights beer and Corona Extra beer had met the placement requirements for targeting adult audiences. This is because the billboard was situated further than a 300 metres sightline from of the main entrance to a school and the Advertiser had confirmed through its media agency that audience data at the intersection in question showed that 86% of the expected audience were adults.

The Complaints Board noted the Complainant was concerned the advertisements were shown in the morning. The Board confirmed that while timing of alcohol advertising was controlled in a traditional television setting, the watershed timing restriction of no alcohol advertisements between 6:00am and 8:30pm did not apply to billboard advertising. The Board noted the Code required audience data to be available to support a predominantly adult audience for billboard advertising.

The Complaints Board agreed the digital billboard advertisements were not in breach of Rule 1(a) of the Alcohol Advertising and Promotion Code.

Does the content of the alcohol advertisements target adults?

The Complaints Board said the content of the three digital billboard advertisements were unlikely to have appeal to minors. The Board said the theme, images and wording used in the advertisements were adult focused.

The Complaints Board agreed the advertisements were not in breach of Rule 1(b) of the Alcohol Advertising and Promotion Code.

Do the advertisements demonstrate responsibility and low-risk alcohol consumption?

The Complaints Board noted the Complainant’s view the digital billboard was irresponsible to show so many alcohol advertisements in the morning.

The Board acknowledged QMS Media’s response which said normal practice was not to expose consumers to consecutive alcohol advertising on its digital billboards. The Board noted the practice of separating categories of advertisements such as alcohol had not occurred on this occasion due to unsold slots condensing down the billboard cycle. The Board acknowledged the self-regulatory action taken by the Media to restrict the number of slots sold to alcohol brands going forward to mitigate the possibility of consecutive alcohol advertising in the future.

The Complaints Board said the digital billboard advertisements were not in breach of Rule 1(c) of the Alcohol Advertising and Promotion Code.

Do the advertisements condone antisocial behaviour?

The Complaints Board noted that alcohol is a legal product. They said the timing of the advertisements was not likely to be considered by most consumers to condone or contribute

to anti-social behaviour and there was nothing in content of the advertisements that encouraged alcohol consumption in the morning.

The Complaints Board said the digital billboard advertisements were not in breach of Rule 1(f) of the Alcohol Advertising and Promotion Code.

Have the advertisements been prepared and placed with a high standard of social responsibility?

The Complaints Board said the advertisements had been prepared and placed with the requisite level of social responsibility as the content and placement targeted adult audiences.

The Complaints Board acknowledged that the unrestricted nature of out of home alcohol advertising means this is an area where care needs to be taken by Advertisers and Media platforms regarding likely audience.

The Complainants Board ruled the digital billboard advertisements were not in breach of Principle 1 or Rules 1(a), 1(b), 1(c), or 1(f) of the Alcohol Advertising and Promotion Code.

Static Billboard

Does the timing and placement of the advertisement target an adult audience?

The Complaints Board said the static billboard advertisement for Corona Extra beer targeted an adult audience based on the location of the billboard outside the 300 metre exclusion zone for schools and the likely age profile of those travelling through the intersection.

The Complaints Board said the static nature of the billboard means there is no timing control as to when the billboard is seen. The Board noted the Code required audience data to be available to support a predominantly adult audience for billboard advertising.

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

Does the content of the alcohol advertisement target adults?

The Complaints Board said the content of the advertisement was unlikely to have appeal to minors. The Board said the theme, images and wording in the advertisement was adult focused.

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

Does the advertisement demonstrate responsibility and low-risk alcohol consumption?

The Complaints Board said the static billboard adequately demonstrated responsible consumption.

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

Does the advertisement condone antisocial behaviour?

The Complaints Board said the fact that the static billboard advertisement could be seen at any time was not likely to be considered by most consumers to condone or contribute to anti-social behaviour.

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

Has the advertisement been prepared and placed with a high standard of social responsibility?
The Complaints Board said the static billboard advertisement had been prepared and placed with the requisite level of social responsibility as the content and placement targeted adult audiences.

The Complainants Board ruled the static billboard advertisement was not in breach of Principle 1 or Rules 1(a), 1(b), 1(c), or 1(f) of the Alcohol Advertising and Promotion Code.

Combined effect of the advertising

The Complaints Board agreed when considering saturation, and the consumer experience of the advertising, it must also take into account the reality that separate billboard companies are unlikely to have knowledge of each other's bookings. It did note in this case, the brands advertising were all part of Lion Co. The Board reiterated that care needs to be taken by the Advertiser when co-ordinating the booking of multiple alcohol campaigns with different media companies with regard to saturation.

The Complaints Board noted the location of the two billboards were opposite each other on a four-lane expressway. The Board said it was likely motorists stopping at the intersection lights for a limited time period would not focus on both sets of advertisements at the same time.

The Complaints Board agreed the two billboards did not meet the threshold to breach the saturation guideline under Principle 1 and Rule 1(a) 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 Media**
4. **Response from Media**

Appendix 1

COMPLAINT

This video was taken on a Monday at 8:25am during morning school drop off. On this digital billboard there were 3 alcohol ads served within 30 seconds. There was also simultaneously an ad for Corona on the JCDecaux billboard opposite this one.

My daughter's school is 650m away and we have to drive through this intersection every school day to drop her (14yrs) and my 11 year old son off to school. I find it offensive to be subjected to so many alcohol ads in the morning with my children in the car on our way to school. As with television, I would expect there to be a time when alcohol ads are not able to be shown on digital billboards (ie between 6am and 8:30pm), given there is control over timing of display.

I believe these advertisers are in breach of the following guidelines as issued by the ASA: 1. Rule 1(c) which states that "Alcohol Advertising and Promotion must demonstrate responsibility and low-risk Alcohol consumption". Showing people drinking in the morning is not responsible. 2. Rule 1 (f) - showing ads of people drinking as early as 8am in the morning is condoning anti-social behaviour. 3. Rule 3(a) of targeting only adults when clearly mornings on a school day, means that there will be children in the car on their way to school.

I would like an outcome where: 1. these ads are removed immediately from all digital billboards (not just these 2 sites) and

2. alcohol advertisers and advertising agencies are given clear guidance that NO alcohol advertising should be shown on digital billboards between certain times when children are likely to be traveling.

Appendix 2

RESPONSE FROM ADVERTISER, LION NZ LIMITED

LION OUT OF HOME ("OOH") ADVERTISEMENTS – COMPLAINT 21/565

1. We act for Lion NZ Limited ("**Lion**"), which has been asked to respond to the above complaint ("**Complaint**") in relation to Lion's OOH advertisements on a digital billboard ("**Advertisements**") at the intersection of Green Lane West and Manukau Road in Epsom, Auckland ("**Intersection**").
2. As a preliminary point, Lion wishes to make it clear that it is mindful of its obligations under the Advertising Standards Code ("**ASC**") and, in particular, the Alcohol Advertising and Promotion Code ("**Code**"). Lion prepares all of its advertisements with significant care and ensures that they are legally compliant and have approval under the Liquor Advertising & Promotion Pre-Vetting Service. In particular, Lion ensures that its advertisements target appropriate audiences, demonstrate responsibility and low-risk alcohol consumption, and do not condone anti-social behaviour.

3. Lion has considered the Complaint and appreciates the opportunity to respond to it. We set out Lion's response to the Complaint below.

The Advertisements

4. The Complaint is about three Advertisements on a digital billboard at the Intersection ("**Digital Billboard**"). The Digital Billboard flashes between Lion Advertisements and non-Lion advertisements. A copy of the "Lion" Advertisements in the order that they appear on the Digital Billboard is **enclosed** in Annexure 1 to this response, with placeholders for the non-Lion advertisements that appear after each Advertisement.
5. The Complaint also refers to a JCDecaux billboard ("**Traditional Billboard**") which is across the road from the Digital Billboard. This displays an advertisement for Corona. A copy of the advertisement on the Traditional Billboard is **enclosed** in Annexure 2 to this response.

The Complaint

6. The Complaint alleges that the Digital Billboard is located 650 metres from a school and displayed the Advertisements in the morning, when children are likely to be travelling. The complainant considers that the Advertisements are in breach of rules 1(c), 1(f) and 3(a) of the Code and seeks that:
 - (a) the Advertisements be removed from all digital billboards; and
 - (b) alcohol advertisers are given guidance that no alcohol advertising and promotion can be displayed on digital billboards between certain times when children are likely to be travelling.
7. Lion has been asked to address principle 1 and rules 1(a), 1(b), 1(c) and 1(f) of the Code.

Relevant principle and rules

8. Principle 1 of the Code provides:

Social Responsibility

Alcohol Advertising and Promotion must be prepared and placed with a high standard of social responsibility to consumers and society.

9. The relevant rules under this principle 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.

Rule 1(c) Alcohol consumption

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

Rule 1(f) Violence and anti-social behaviour

Alcohol Advertising and Promotion must not, unless justifiable on educational or social grounds, contain anything that condones, or is likely to show, violent or anti-social behaviour or damage to property.

Lion's position

10. Lion's view is that the Advertisements are not in breach of rules 1(a), 1(b), 1(c) and 1(f) or principle 1 of the Code, and the Complaint should not be upheld.

Rules 1(a)

11. As set out above, rules 1(a) requires the timing and placement of the Advertisements to target adult audiences.
12. The Complaint argues that there are children on their way to school in the mornings and, therefore, the Advertisements do not only target adult audiences.
13. The Digital Billboard is located at a busy Intersection and most people drive by in cars. It is not possible to select adult audiences or restrict access to adults only. Guideline 4 of rule 1(a) explains that, in these circumstances, 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.
14. Guideline 6 of rule 1(a) specifically applies to OOH advertisements and provides that alcohol advertising and promotion may be placed in locations only when available tools and/or audience data (guidelines 3 or 4) are used to target adults. This includes a bright line rule that advertisers must not place alcohol advertising and promotion on fixed sites within a 300-metre sightline of the main entrance to a primary, intermediate or secondary school.
15. The Complaint alleges that the Intersection is 650 metres from a school. Therefore, the Advertisements are not caught by the bright line rule under guideline 6 of rule 1(a).
16. Lion's media agency confirmed the audience data at the Intersection before Lion placed the Advertisements at this site. The percentage of weekly audience aged 0 to 17 is 14%.
17. Accordingly, the Advertisements meet guideline 4 of rule 1(a), as the available industry-standard audience composition data shows that well over 80% of the expected average audience are adults.
18. Lion notes that the Complaint appears to distinguish the Digital Billboard from the Traditional Billboard at the Intersection on the basis that the timing of the Digital Billboard display can be controlled. In Lion's view, there is no such distinction under rule 1(a) and it would be non-sensical to read such a distinction into the guidelines. This is because:
- (a) guideline 6 of rule 1(a) applies to OOH advertisements and explains how rule 1(a) operates in relation to OOH advertisements;
 - (b) guideline 5 deals with "saturation" but is addressed to the media and clearly contemplates situations where there is a mixture of content and advertisements, which is not the case for OOH advertisements; and

(c) guideline 7 prohibits alcohol advertising and promotions from being broadcast during real-time schedule television content between 6 am and 8.30 pm. There is no equivalent guideline for OOH advertisements.

19. From a practical and commercial perspective, there is no credible reason why digital billboards should be treated differently to traditional billboards. If a traditional billboard which displays an alcohol advertisement 24/7 is permitted, a digital billboard in the same location which displays various alcohol and non-alcohol advertisements should also be permitted, including during peak-hour traffic, ie the most valuable times of the day. If this was not the case, the Code would effectively disincentivise the use of digital billboards, which seems unlikely to be the intention, especially given the low percentage of 0 to 17 year-old audience as noted above.
20. The overall intent and wording of principle 1 of the Code is to facilitate alcohol advertising and promotions in a responsible manner, including OOH advertisements in a responsible manner. Lion considers that the Advertisements meet the guidelines of rule 1(a) in relation to OOH advertisements and, therefore, are not in breach of rule 1(a).

Rule 1(b)

21. As set out above, rule 1(b) of the Code requires that the content of the Advertisements target adult audiences.
22. Nothing about the presentation or content of the Advertisements appeals particularly to minors. The Advertisements do not contain anything prohibited by the guidelines of rule 1(b), such as any minors, pregnant women, breastfeeding or visually prominent people who are under 25.
23. Accordingly, Lion's position is that the Advertisements are not in breach of rule 1(b) of the Code.

Rule 1(c)

24. Under rule 1(c) of the Code, the Advertisements must demonstrate responsibility and low-risk alcohol consumption.
25. Guideline 1 of rule 1(c) provides that the Advertisements must not portray or represent irresponsible, harmful or excess consumption of alcohol. The Complaint argues that showing people drinking in the morning is irresponsible.
26. Lion understands that the Complaint is referring to the Advertisement for Coruba, which shows two people having a drink. There is no suggestion that the two people are drinking in the morning. Instead, they appear to be on holiday, in the context of an outdoor bar situated in a tropical location, which is appropriate given the well known link between Coruba and the Caribbean.
27. In addition, each person only has one glass. Lion considers that this demonstrates responsibility and low-risk alcohol consumption, and there is no credible argument that this advertisement promotes drinking alcohol in the morning.
28. As noted above, digital billboards should not be treated differently to traditional billboards. A traditional billboard that displays an alcohol advertisement in the morning (as it does in the afternoon) has the same effect as a digital billboard in the same location that displays various alcohol and non-alcohol advertisements in the morning.

29. In Lion's view, none of the Advertisements suggest that alcohol should be consumed in the morning. There is no connection between the Advertisements and when alcohol should be consumed, other than a sunny day being a "day for it". Lion does not consider that this is irresponsible, nor would consumers be likely to interpret an Advertisement viewed the morning as an implicit recommendation that the subject of the Advertisement is to be undertaken in the morning.
30. Accordingly, Lion's position is that the Advertisements are not in breach of rule 1(c) of the Code.

Rule 1(f)

31. The Complaint further argues that showing people drinking in the morning condones anti-social behaviour, in breach of rule 1(f) of the Code.
32. For the same reasons set out at paragraphs 26 to 29 above in relation to rule 1(c), Lion considers that there is nothing about the Advertisement for Coruba or any of the other Advertisements that promote anti-social consumption or even the consumption of alcohol in the morning, and the Advertisements are not in breach of rule 1(f) of the Code.

Principle 1

33. As we trust is evident from this response, Lion has exercised particular caution to comply with all applicable laws and advertising standards in preparing and placing the Advertisements. Lion considers that the Advertisements have been prepared and placed with a high standard of social responsibility and, overall, the Advertisements are not in breach of principle 1 of the Code.
34. Lion takes all complaints seriously. It has reviewed the Complaint carefully and remains of the view that the Advertisements are compliant with the Code.
35. If the timing of alcohol advertisements on digital billboards are distinguished from that of alcohol advertisements on traditional billboards, and the Complaint is upheld, there would be wide ramifications for the advertising industry and the commercial value of digital billboards.
36. If the Complaints Board requires any further information, Lion would be happy to provide this.

Appendix 3

RESPONSE FROM MEDIA, QMS MEDIA

We have 8 slots each week and each slot runs for 8 seconds. We don't play categories in succession, we ensure that each slot is a different category to the next, however it is possible to have more than one alcohol ad per rotation.

FURTHER RESPONSE FROM QMS IN RELATION TO QUESTION ABOUT BACK-TO-BACK ALCOHOL ADVERTISING

In response to your question below, regarding 2 alcohol creatives playing back to back, this is not something that would normally happen. As I mentioned in our earlier correspondence we have 8 slots available on our digital sites, however, in this particular instance only 6 slots were sold and 4 of those were to alcohol brands which meant that there ended up being 2 alcohol ads playing together.

We have now restricted the total number of slots that are able to be sold to alcohol brands to 3 per rotation so that we can always ensure that we do not over saturate alcohol advertising on any particular site.

We are also currently updating the MediaWorks policies in relation to advertising in general (alcohol advertising, health & therapeutic, etc). The legal team plans to present the updated guidance notes to the business in early May.

Appendix 4

RESPONSE FROM MEDIA, JCDECAUX BILLBOARDS

It looks like this was our digital Epsom placement, the Corona creative below ran from the 6th – 12th of December. Also have checked if we have any further Corona adverts on this particular site and it looks like this was the last.