

COMPLAINT NUMBER	22/053
ADVERTISER	Lion NZ Limited
ADVERTISEMENT	Smirnoff, Television OnDemand
DATE OF MEETING	12 April 2022
OUTCOME	Upheld Advertisement to be removed and not to be used again in its current form

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about an OnDemand television advertisement for Smirnoff vodka. The Complaints Board said the consumer takeout of the advertisement included both versatility and frequency. They said the reference to “100 days, 100 ways” encouraged excessive consumption. The Complaints Board said this did not comply with the high standard of social responsibility required of alcohol advertising.

Advertisement

The TVNZ OnDemand Lion advertisement for Smirnoff vodka promotes their campaign “100 days, 100 ways”. The advertisement shows a cocktail in between the words “100 days” and “100 ways”, with the image of the cocktail switching to another to the rhythm of the music. The final shot shows a bottle of Smirnoff vodka and the words “we see #purepotential” and “follow @smirnoffnz”.

Summary of the Complaint

The Complainant was concerned the advertisement was harmful to promote high levels of alcohol consumption by implying it was exciting to consume the product in 100 ways over 100 days. The Complainant said the promotion of daily drinking goes against the Ministry of Health’s recommendation of abstaining from alcohol at least two days a week.

Issues Raised:

- Social Responsibility
- Alcohol Consumption

Summary of the Advertiser’s Response

The Advertiser said the advertisement was created to show the versatility of the product “100 Days 100 Ways”. The Advertiser said there is no suggestion the consumer should consume alcohol every day for 100 days or that such consumption is healthy or safe. The Advertiser said the rationale for the advertisement was that, by highlighting as many as 100 different ways to include Smirnoff vodka in a beverage, consumers would conclude that the product can be used in far more diverse ways than it is perhaps currently consumed. The 100 days reference was intended to convey that any day the consumer chooses to have a drink, there are multiple options and avoids any suggestion the 100 ways should be consumed all at once. The Advertiser said a degree of common sense needs to apply to adult viewers.

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

Summary of the Media Response

TVNZ OnDemand said the targeting parameters of the advertisement were all people aged 18-44 based on logged in profile data. From 5:00am-8:30pm delivery is restricted to content rated M and over.

A full copy of the Media's response is in Appendix 3.

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

GUIDELINES

1. Alcohol Advertising and Promotion must not portray or represent irresponsible, harmful or excessive consumption of Alcohol, for example, but not limited to:
 - i. Rapid, heavy or frequent consumption
 - ii. Peer pressure to consume
 - iii. Refusal of Alcohol is portrayed negatively as a weakness
 - iv. Drinking games
 - v. Serving sizes greater than the recommended standard serving size guidelines
 - vi. Daily consumption or regular consumption that is portrayed as healthy or safe

Relevant precedent decision

In considering this complaint the Complaints Board referred to precedent Decision 20/368 which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 20/368 concerned a Facebook advertisement for Nitro Vodka which reference the COVID-19 lockdown and said nobody cared what time drinks started each day and contained an image of a clock with the numbers replaced with alcohol products. The Complainants were concerned the advertisement promoted binge drinking in lockdown.

The Complaints Board Upheld the complaints because the alcohol advertisement encouraged the consumption of its product at any time and could be interpreted as a challenge to binge drink.

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: Promotion of Lion vodka product over summer
 - Medium: OnDemand Television
 - Audience: Adult audience
 - Product: Smirnoff vodka

Consumer Takeout

The majority of the Complaints Board agreed the likely consumer takeout of the advertisement was primarily about versatility, with a secondary takeout of frequency, inviting the consumer to try a new cocktail each day for 100 days of the challenge.

A minority of the Board said the consumer takeout focused on the versatility of the product, highlighting the many different ways the product could be consumed.

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

The majority of the Complaints Board said the combination of versatility and frequency in the advertisement meant it did not support responsible consumption. The majority of the Board said the six second television advertisement delivered a quick message and consumers were likely to register the 100 ways and 100 days in equal measure. The Board noted the Advertiser's response that the 100 days was intended to refer to multiple options for any day a consumer chose to use the product over the summer period. However, the majority of the Board said this nuanced message did not come across clearly given the rapid presentation and was more likely to be interpreted by consumers as a frequency suggestion or challenge.

The majority of the Board noted the Guidelines for Rule 1(c) of the Alcohol Advertising and Promotion Code included the following examples of how alcohol advertisements must not portray or represent irresponsible, harmful or excessive consumption of alcohol:

- i. Rapid, heavy or frequent consumption
- ...
- vi. Daily consumption or regular consumption that is portrayed as healthy or safe.

The majority of the Complaints Board said the inclusion of frequency as part of the consumer takeout suggested an encouragement to drink on a regular basis in breach of Rule 1(c) of the Alcohol Advertising and Promotion Code.

A minority of the Complaints Board disagreed. The minority said the main takeout related to the versatility of the product. It considered it was possible to try the different recipe options available without undermining the Ministry of Health's alcohol guidelines which suggest a limit of two drinks per day and at least two alcohol free days per week. For a minority of the Board, the advertisement did not meet the threshold to breach Rule 1(c) of the Alcohol and Promotion Code.

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

The majority of the Complaints Board said the advertisement had not been prepared with a high standard of responsibility. This is because the advertisement was in breach of Rule 1(c) of the Code relating to frequent consumption. The majority of the Complaints Board said the advertisement was therefore in breach of Principle 1 of the Alcohol Advertising and Promotion Code.

A minority of the Complaints Board said the advertisement's focus was product versatility and it did not encourage an unsafe level of consumption. A minority of the Board said the advertisement was not in breach of Principle 1 or Rule 1(c) of the Alcohol Advertising and Promotion Code.

In accordance with the majority, the Complaints Board ruled the advertisement had not met the requisite high standard of social responsibility for alcohol advertising and was in breach of Principle 1 and Rule 1(c) of the Alcohol Advertising and Promotion Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed and not used again in its current form.

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.

Appendix 1

COMPLAINT

An advert aired on the TVNZ on demand application while I was watching the show Task Master around 2.30pm on 12/2/2022 The Smirnoff vodka "100 days 100 ways" advertisement ran with an implication their product being consumed in 100 ways over 100 days was exciting. I don't think this is a healthy message to be advertising and found it problematic. There is clear evidence of negative health, personal and social issues around habitual drinking of alcohol. It is harmful to have messaging promoting such high levels of alcohol consumption. I myself have been through group alcohol and drug counselling. I know I am not alone in finding it extremely problematic how socially accepted and promoted that drinking daily and binge drinking is in New Zealand culture. This advertisement was so blatant in its implication that I found it necessary to make a complaint. The Ministry of Health recommends abstaining from alcohol at least 2 days a week. The Ministry also states that no amount of alcohol consumed can be deemed safe. Smirnoff's wilful disregard of the health of New Zealanders is evident and it is dangerous. I would like to see the advert pulled from the air. I believe alcohol companies should be more strictly regulated as to how they advertise.

Appendix 2

RESPONSE FROM ADVERTISER, LION NZ LIMITED

LION ONDEMAND ADVERTISEMENT – COMPLAINT 22/053

1. We act for Lion NZ Limited ("**Lion**"), which has been asked to respond to the above complaint ("**Complaint**") in relation to an advertisement on TVNZ OnDemand ("**Advertisement**").
2. 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. As was the case for the Advertisement, Lion is particularly mindful that its advertisements demonstrate responsibility and low-risk alcohol consumption.
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 Advertisement

4. The Complaint relates to a six-second Advertisement for Smirnoff vodka, which has been aired on TVNZ OnDemand at a time and during content that apply to adults. A copy of the Advertisement is **attached** to this response.
5. The Advertisement shows various ways that Smirnoff vodka can be used. The Advertisement was specifically created to show the versatility of the product (and vodka more generally). This forms the reasoning behind the message "100 Days 100 Ways".

The Complaint

6. The Complaint alleges that the implication of the Advertisement was that Smirnoff vodka should be consumed in 100 ways over 100 consecutive days. The Complaint argues that the Advertisement promotes heavy and frequent consumption, which is unhealthy and unsafe.
7. Lion has been asked to address principle 1, rule 1(c) of the Alcohol Advertising and Promotion Code ("**Code**").

Relevant principle and rule

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. Rule 1(c) states:

Alcohol consumption

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

Lion's position

10. Lion's view is that the Advertisement is not in breach of rule 1(c) of the Code, and the Complaint should not be upheld.
11. In relation to guideline 1 of rule 1(c), the Advertisement does not in any way portray:
- (a) heavy or frequent consumption of alcohol; or
 - (b) daily or regular consumption as healthy or safe.
12. Lion is mindful of the low-risk alcohol drinking advice from Te Hiringa Hauora / Health Promotion Agency. Notably, this recommends no more than two standard drinks for females and three standard drinks for males each day with at least two alcohol free days per week. Lion also acknowledges the risks with excessive alcohol consumption and takes health and safety, as well as complaints in this regard, seriously. It has reviewed the Complaint carefully and remains of the view that the Advertisement is compliant with the Code.
13. In particular, the Advertisement has been prepared with rule 1(c) of the Code in mind. Lion has exercised particular caution not to portray heavy or frequent consumption, or daily or regular consumption as healthy or safe.
14. As noted above, the Advertisement promotes the versatility of the product and there is no suggestion that the consumer should consume alcohol every day for 100 days or that such consumption is healthy or safe. The rationale for the Advertisement was that, by highlighting as many as 100 different ways to include Smirnoff vodka in a beverage, consumers would conclude that the product can be used in far more diverse ways than perhaps currently consumed. This is supported by the fact that the Advertisement focuses on images of different ways that Smirnoff vodka can be used and aligns with Smirnoff's key brand marketing line of "Pure Potential."
15. The reference to "100 days" in the Advertisement is intended to convey that any day the consumer chooses to have a drink, there are multiple different ways to enjoy Smirnoff vodka – it gives the consumer the impression that there is a lifetime's worth of different ways to enjoy Smirnoff vodka. The reference to "100 days" also avoids any suggestion that the consumer should try 100 ways of consuming Smirnoff vodka at once.
16. The courts and the Complaints Board have been clear in a number of decisions that it is the view of the reasonable consumer that needs to be taken into account and, to use

the wording from the leading Court of Appeal decision in *Godfrey Hirst v Cavalier Bremworth*,¹ "consumers must exercise a degree of care which is reasonable having regard to all the circumstances", taking into account consumers' knowledge, acumen and ability.

17. While we (and Lion) have sympathy for the complainant's specific circumstances, there has to be a degree of common sense applied on behalf of viewers of advertisements shown during adult-content television, namely:
 - (a) it is widely accepted that alcohol is not to be consumed every day, or even regularly, even taking into account that the Advertisement does not suggest consumers should be drinking vodka daily. The absence of a statement not to consume 100 vodka beverages in 100 days should not (and in Lion's view would not) be taken by a consumer to represent an implicit suggestion to consume alcohol in that quantity and frequency;
 - (b) vodka is often used in cocktails and RTDs, so there are a lot of ways it can be consumed to suit a particular consumer's taste – consumers will therefore be interested in the fact that there are 100 ways to try Smirnoff vodka; and
 - (c) a lot of the images shown in the Advertisement are cocktails, which are drinks typically enjoyed at bars and infrequent occasions. The reasonable consumer would appreciate there is no suggestion in the Advertisement that viewers should consume a cocktail each day for 100 days given this is not how such drinks are consumed – with respect to the complainant, this is too much of a strained interpretation when the Advertisement is considered objectively.
18. In Lion's view, the Advertisement appropriately demonstrates responsibility and low-risk alcohol consumption, and the Complaint should not be upheld.
19. If the Complaints Board requires any further information, Lion would be happy to provide this.

Godfrey Hirst NZ Ltd v Cavalier Bremworth Ltd [2014] NZCA 418, [2014] 3 NZLR 611 at [51].

Appendix 3

RESPONSE FROM MEDIA, TVNZ ONDEMAND

Targeting parameters are as below: - Demo all people 18-44 based on logged in profile data.
 - From 5AM – 830PM delivery is restricted to M and over rated content only i.e. M, R16, R18 etc.
 - From 830pm to 5am it's able to run on all content (excluding kids, children and sensitive content such as Finding Neverland) with reliance on the demo target to ensure only adult profiles see the ad.
 - On Livestream it delivery of the ad is restricted post 830PM only.
 Frequency of this campaign is 2 p/week.