



Case Report

1	Case Number	0001/17
2	Advertiser	Lion
3	Product	Alcohol
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	18/01/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The advertisement that is the subject of this complaint is a TVC for XXXX Gold. The campaign is "Take in the Gold" and the TVC shows a man getting a boat ready to depart the dock. We see the man fill an esky of 6 beers full of ice and also reeling in the line. We then see the captain arrive and the man throws the keys of the boat to the captain and says thanks skipper. The TVC then shows the guests on the boat sitting down having one XXXX gold each and eating prawns and everyone is in a safe and social and relaxed environment. The driver of the boat is sitting there not drinking throughout the TVC. The campaign is all about taking in the golden, engaging and sociable moments with friends and family in the great Australian outdoors.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The issues I have, about this advert:

- no one on the boat is wearing a life-jacket, especially as they are drinking on the sea
- the Skipper/Captain had a drink of beer, again with no life jacket
- plus, the skipper is drinking, when there are quite a few people on board, as if the advert is saying 'it's okay to drink, I'm the captain/skipper'!

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Re: ASB Complaint XXXX Gold TVC

I refer to your numerous letters dated throughout December 2016 and January 2017 and set out below Lion's response to complaints, for consideration by the ASB Panel.

To confirm, the outdoor billboard was pre-vetted internally at Lion and externally by the Alcohol Beverages Advertising Scheme's (ABAC) Alcohol Advertising Pre-vetting Service (AAPS), receiving approval before going to market.

Advertisement Description

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Response to Complaints

Lion does not consider that the Advertisement breaches any section of the AANA Code of Ethics.

Does the advertisement breach Section 2 of the Advertiser Code of Ethics, namely the following:

2.6 - Health and Safety Unsafe behaviour

2.6 - Health and Safety Within prevailing Community Standards

- Lion takes water safety very seriously as well as community concerns around water safety especially at this time of year. We understand that life jackets are a key safety feature in recreational boating and must be carried on board at all times, however; it is not a prevailing community standard for them to be worn in the circumstances featured in the advertisement subject to the complaint.*

- During production of this advertisement, Lion worked closely with its legal counsel and external legal advisors, Baker & McKenzie, to ensure it complied with the maritime safety regulations for each Australian State and Territory and the Australian Association of National Advertisers Code of Ethics (Code). As this is a national campaign, and despite the laws governing the wearing of life jackets not being harmonised, we ensured that the advertisement complied with the regulations in each jurisdiction. Lion also worked closely*

with an ABAC/AAPS pre-vetter throughout the process.

- *Maritime safety regulations across Australia require a life jacket to be carried in the appropriate size and type for each person on board the vessel. There is no legal requirement to wear a life jacket in circumstances where a recreational boat is stationary and in safe calm waters, as depicted in the ad. When the boat is being lowered into the water and the motor on, we do see the captain in the boat wearing a life vest. When we see the guests, the boat is stationary, the motor is off and the people are in a calm safe environment.*

- *In Lions opinion, prevailing community standards in respect of the requirement to wear life jackets reflect the maritime safety laws in each jurisdiction. That is, the Australian community would reasonably require a life jacket to be carried for each adult on board but would not expect an adult to wear it when the motor is not on and the water conditions are calm. When we think of community standards, we must think of the thousands of boats that leave our shores every day similar to the one depicted in this advertisement and, while life jackets are stored on board those boats, in a safe calm social setting, life jackets to be worn are not mandatory and are only required to be on the vessel and used in dangerous conditions or in the case of an emergency.*

- *The advertisement shows the passengers of the boat engaging in a fun, sociable and safe environment. To show that the boat is still, the driver of the boat is visibly calm, at ease and sitting back in his seat with his hands removed from the wheel, drinking a bottle of water, while gazing out over the water while his passengers socialise and take in the golden moments with friends and family on board. The water is still and calm and no there is no indication of any motion on the boat. No one is in danger and there is no sign of distress. No one is swimming or is intending to go swimming; No one consuming alcohol is operating heavy machinery, as the boat has a designated driver.*

- *Numerous complaints highlight that the driver is consuming alcohol. If you re watch the TVC we see the guy throw the keys to the boat to the captain and then we see the captain sitting at the wheel drinking water. The driver is not drink driving and is not promoting drink driving.*

- *We also disagree that the advertisement undermines safety messaging around alcohol and water. There is nothing in this advertisement that alludes to irresponsible consumption of alcohol. The number of cans of mid-strength XXXX Gold depicted in the advertisement is limited to six cans (less than 1 standard drink per person), and a bottle of water is very clearly placed next to the steering wheel for the driver of the boat who is not drinking. No one on the boat is or looks drunk or acting in a dangerous or irresponsible way. They are in a safe environment enjoying a sociable moment with friends.*

- *Numerous complaints also mention that it can reasonably be implied that the driver and/or passengers will need to load the boat onto the trailer and drive home, thereby encouraging drink driving. The driver of the boat is responsible and is the designated driver. There are only six cans of beer on the boat for 6 people and food and they could be on the boat socialising for more than 4 hours. We are aware of the ABV volume that is designated for government and drink driving laws and in no way would we encourage people to drink on a boat and drive home.*

Lion's commitment to responsible marketing

As a responsible advertiser, Lion has demonstrated a long-standing commitment to upholding both the letter and intent of the AANA's Advertising Codes.

Lion maintains strict internal and external processes to ensure this compliance.

As part of Lion's marketing approvals process, this advertisement for XXXX Gold was subject to:

- Internal legal review and advice from an external legal firm specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;*
- Review by Lion's internal marketing compliance team to ensure its adherence to all relevant advertising codes;*
- Review and approval through ABAC's external and independent pre-vetting service (AAPS) at both concept and final stages, receiving approval before going to market*

If you require any further clarification or supporting materials, please do not hesitate to contact me.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement depicts people drinking beer on a boat, and not wearing life jackets, which is contrary to prevailing community standards.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted that this television advertisement features a man preparing a boat to depart from a dock and we see him fill an esky with 6 beers then throw the keys to a man he refers to as 'Cap' before we see the man and his guests drinking on the boat.

The Board noted the complainant's concern that the people on the boat are not wearing life jackets. The Board noted the advertiser's response that the laws governing the wearing of life jackets are not harmonised across the States and Territories of Australia therefore they ensure they complied with the regulations in each jurisdiction.

The Board noted that across Australia life jacket laws differ and considered that the advertisement's depiction of the people on a boat not wearing a life jacket in a stationary boat

close to shore did not amount to an unsafe or illegal act given the laws governing the wearing of life jackets are not harmonised but jurisdictionally determined. The Board acknowledged there is a high level of community concern around safety in the water, especially given the recent spate of drownings across Australia, but considered that while the wearing of life jackets on a boat may be considered best practice for adults it is not law in the situation depicted in the advertisement and therefore does not breach prevailing community standards on health and safety.

The Board noted the complainant's concerns over the drinking of beer on a boat. The Board noted that we see 6 cans of beer being placed in an esky on the boat and considered that 6 beers between 5 people is not excessive and does not depict, encourage or condone drinking alcohol to excess. The Board noted that the main character in the advertisement is shown drinking a beer after he has reversed his car with the boat down the ramp and considered that we clearly see the man throwing the keys to the boat to a man wearing a baseball cap who is then seen to be captaining the boat and there is no suggestion that anyone has drunk alcohol before driving any vehicle. The Board noted that while the passengers on the boat are all holding a can of beer, the captain is holding a bottle of water and considered that it is not illegal for passengers on a boat to drink alcohol and there is no suggestion that the captain is going to join them in a drink of beer. The Board noted the complainant's concerns over drinking alcohol in a public place but considered that the beer is drunk when the passengers are on the boat and this is not illegal. The Board acknowledged that there is a level of community concern around the consumption of alcohol on or near water but considered that the advertisement depicts only one drink being consumed by the passengers and the Captain is drinking water, not beer. The Board considered that the advertisement does not breach prevailing community standards on health and safety around alcohol consumption on the water.

The Board noted the way the boat is guided in to the water and considered that while the reversing of a car towing a boat down a boat ramp might not be best practice it is not illegal and in the Board's view it is not uncommon in Australia.

Overall the Board acknowledged a level of community concern around the depiction of alcohol in the sun on a boat but considered that the advertisement depicts responsible consumption and does not encourage or condone any behaviour which is contrary to prevailing community standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

