



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0222/18
2	Advertiser	Lion
3	Product	Alcohol
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	09/05/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Depiction of smoking/drinking/gambling
- 2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

The television advertisement features four men fishing in calm, inland waters on a small motorised boat. The boat is stationary. Two of the men are standing and two are sitting. They celebrate after catching a fish. At the end of the commercial a man is seen drinking a beer.

THE COMPLAINT

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

The problem with this ad is that none of the men in the boat are wearing life jackets as prescribed by law. Whilst that is a problem in itself, it is followed by drinking beer. The whole package then promotes a sense of reckless behaviour and ignoring legal obligations...a huge oversight by the advertiser.

THE ADVERTISER'S RESPONSE



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

Description of advertisement

The advertisement features four men fishing on a boat on calm waters in the middle of the day and there is no consumption of alcohol taking place. Following this scene, it cuts to an end shot with one of the fisherman taking a sip of Iron Jack while sitting at a campsite as the sun is setting.

Response

Thank you for raising this complaint with us.

I have laid out Lion's response to the complaint the Iron Jack advertisement is in breach of Section 2 of the AANA Advertiser Code of Ethics ("Code") for consideration by the Panel.

The advertisement referred to features four men fishing on a boat on calm waters in the middle of the day and there is no consumption of alcohol taking place. Following this scene, it cuts to an end shot with one of the fisherman taking a sip of Iron Jack while sitting at a campsite as the sun is setting.

Lion believes the advertisement is not in breach of any of the provisions of the Code, specifically Section 2.6, which states Advertising or Marketing Communications must not depict material contrary to Prevailing Community Standards on health and safety.

Lion takes water safety very seriously, as well as community concerns around water safety. We understand that life jackets are a key safety feature in recreational boating and must be carried on board at all times, however in our view 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 the advertisement, Lion worked closely with its internal legal counsel and external relations advisors to ensure that the advertisement complied with all laws and community standards, including the Maritime Safety Regulations and the 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 where the advertisement is broadcast.

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.



The advertisement was filmed on inland waters in Cobourg in the Northern Territory, and we confirm that a life jacket was carried for each adult on the boat to ensure passenger safety in the event of an accident, or rough waters, in accordance with maritime safety regulations and prevailing community standards. In every state and jurisdiction that that advertisement was shown, there is no legal requirement to wear a life jacket in circumstances where a recreational boat is manned by more than one person, and is in safe, calm waters, as depicted in this advertisement.

In Lion's opinion, prevailing community standards in respect of the requirement to wear life jackets reflect the Maritime Safety Regulations. That is, the Australian community would reasonably expect a life jacket to be carried for each adult on board but would not expect an adult to wear it when the motor is off, and the water conditions are calm.

They are there to be worn when swimming or participating in water sports in open water, when there is only one person onboard, when conditions are dangerous, or in case of an emergency.

In addition to this, the individuals who feature in this advertisement are professionals in this field, not actors. Their fishing expertise can be seen on Instagram using the handle @gtbuster.

THE DETERMINATION

The Ad Standards Community Panel ("Panel") considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the "Code").

The Panel noted the complainant's concern that the advertisement features reckless and unsafe behaviour.

The Panel viewed the advertisement and the advertiser's response.

The Panel noted that this television advertisement features four men on a boat fishing, followed by one of the men drinking a beer.

The Panel 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 Panel noted the complainant's concern that the advertisement depicts the men not wearing life jackets and drinking, and that this promotes a sense of reckless behaviour and ignoring legal obligations.



The Panel noted the advertiser's response that the law does not require the men to be wearing life jackets, and that life jackets were present on the craft.

The Panel noted that it had previously considered complaints about a similar issue in case 0164/16, in which:

"The Board noted that across Australia, life jacket laws differ from state to state and noted the advertiser's comment [regarding] the difficulties this created. The Board considered the advertiser's comments that the advertisement was filmed in Victoria and the activity shown complied with Victorian laws, including adherence to all water way rules, speed limits and regulations.

The Board considered that the advertisement's depiction of the man 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 considered that wearing life jackets on a boat may be considered best practice for adults and children but is not law in the situation depicted in the advertisement, in all jurisdictions. The Board further noted that all applicable jurisdictional laws did state that children must wear a life jacket, and this has been complied with in the advertisement.

The Board was of the view that the material depicted would be contrary to Prevailing Community Standards on safety when the advertisement was shown in a jurisdiction where the law required a flotation device to be worn by both adults and children in the circumstances shown, however, in this instance the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards."

The Panel noted the advertiser's response that the advertisement was filmed in inland waters in the Northern Territory and considered that the relevant Northern Territory regulations require that there is one approved personal flotation device for each person aboard pleasure crafts operating in inland waters
https://nt.gov.au/__data/assets/pdf_file/0007/230938/guide-recreational-boating.pdf.

The Panel considered that this regulation was consistent with regulations in most other states and territories (<https://wearitaustralia.com.au/state-laws/>) apart from:

- Victoria which requires approved life jackets or PFDs be worn in any recreational motor boat or motor-propelled tender that is under six metres in length whilst under power. The Panel considered that we do not see the boat under power in the current advertisement.
- South Australia which requires in motor boats less than 4.8 meters in length everyone on board the vessel must wear a lifejacket at all times when underway or at anchor.



The Panel considered that there is no requirement that the men be wearing the life jackets while fishing in the circumstances depicted in the advertisement.

The Panel noted that there is a requirement in most jurisdictions that approved life jackets be carried on board and considered that it would be advisable for advertisers to clearly depict these in advertisements featuring watercraft. However, the Panel considered that the lifejackets not being visible in the advertisement was not in itself against prevailing community standards on health and safety.

The Panel considered that the men were depicted in a boat on calm waters, close to shore and that there was not a depiction of unsafe behaviour. The Panel also considered that most members of the community would not deem four men in calm, inland waters not wearing lifejackets to be against prevailing community standards on health and safety.

The Panel considered that the man at the end of the advertisement drinking a beer was clearly on shore. The Panel considered that there was no suggestion that the men in the boat were drinking, or had been drinking. The Panel considered that the depiction of a man drinking a beer after fishing was not a depiction which would be seen by most members of the community to condone or promote drinking while operating a boat.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety regarding water safety and did not breach Section 2.6 of the Code.

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

