

ADVERTISING STANDARDS COMPLAINTS BOARD

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DECISIONMeeting 17 March 1998Complaint 98/35

Complainant: GALA - C Turner

Advertisement: Lion Red (The King)

Complaint: A roundel advertisement for Lion Red appeared in a liquor outlet. The advertisement showed a hirsute figure with a large quiff and fangs, wearing a read flowery shirt and medallion portraying the Lion Red logo. The words "The King" appeared beneath the figure. The back of the advertisement included, amongst others, the statements "...The King" He's a cross between King Kong and the legendary Elvis...Lion Red has taken the theme of our exciting new 500ml can, the King Kan..." and "...this summer remember, "The King Ain't Dead...He's Red."

The Complainant said:

"I write on behalf of GALA to complain about the enclosed advertisement for Lion Red beer. It appears to breach Rule 1(d) of the liquor advertising Code by referring to Elvis Presley.

Although Presley died about 20 years ago the Hutchison Softback Encyclopedia (3rd Edition) states "his records continue to sell in their millions into the 1990's." It thus seems that he could be regarded as a hero of the young."

Relevant ProvisionsCode for Liquor Advertising

Rule 1(d) which states [liquor advertisements]

"Shall not use or refer to identifiable heroes or heroines of the young."

The advertiser, through its legal representative Gilbert Swan, said:

"We have received instruction to respond to this complaint made by Mr Cliff Turner, the Complaints Secretary of GALA, from Lion Breweries, the advertiser and its agency, Saatchi & Saatchi Advertising Limited.

The Complaint

The Complainant has not identified the medium within which the representation complained of has appeared claiming that it is an advertisement. As there have been rulings in the past that items such as bar coasters do not amount to advertisements as defined in the Advertising Codes of Practice, it would have been of assistance if the medium of publication had been required to be identified prior to the acceptance of this complaint. The material provided by the Complainant is material produced by the advertiser to communicate details of a sale promotion scheme to its wholesalers and retailers. It is designed to replace a communication by letter and, it is submitted, falls outside a strict definition of advertisement contained within the Advertising Codes of Practice.

Elvis Presley

The Complainant maintains that the representation is of 'Elvis Presley'. This assertion is not accepted by the advertiser or its agency. For Copyright, and Fair Trading Act reasons, a 'personality' of the nature of Elvis Presley would not be employed without appropriate consents and releases being obtained.

We attach a colour copy of the representation complained of to assist the Complaints Board. The figure represented is clearly fictional and neanderthal in looks. It could be taken to be a stylised 'King Kong' figure as easily as it could be taken to be Elvis Presley.

The reference to 'The King' is a reference to the advertiser's 'King Kan' product and is also associated with the 'Liquor King' chain of retail liquor outlets maintained by the advertiser. It is submitted that the reference to "The King" can not be taken necessarily to refer to Elvis Presley who sometimes is referred to in the same fashion as are male members of a royal family. The words are words of common usage. We would also note that Elvis was neither hirsute nor possessed of canine teeth.

'Identifiable Heroes and Heroines of the Young'

As noted, it is denied that the representation is that of Elvis Presley. To assist the Complaints Board should it wish to rule that Elvis Presley is not a hero of the young within the terms of Rule 1(d) of the Code for Advertising Liquor, we draw the attention of the Board to:

1. The decision of the Complaints Board in complaint 96/271 (copy attached). This decision provides a comprehensive review of the issue of determination of heroes and heroines of the young in a similar context to this complaint. In particular, the Decision confirms that for a breach of Rule 1 (d) to occur, there

must be evidence that the personality holds celebrity status with minors. Apart from an undated reference to a softback encyclopaedia, no such evidence is provided.

2. The advertiser and its agency upon receipt of this complaint sought specific evidence on the appeal of Elvis to minors. Attached are responses from Mai FM and Marbeck Records of Auckland, which the advertiser maintains are both independent and expert, to the contrary. We ask that the Complaints Board accept this evidence.
3. We attach an extract from "The Faber Companion to 20th Century Popular Music" authored by Phil Hardy and Dave Laing and published in 1990. This provides a comprehensive review of the life and work of Elvis Presley. Please note that Presley died in 1977 and the final comments that record sales increase on anniversaries of his death which indicates that an older age group are in the words of 'Manu Taylor' trying to reclaim their youth.

Conclusion

The advertiser and its agency maintain:

1. That no evidence is provided that this representation complained of is an advertisement.
2. That the representation is not of Elvis Presley.
3. That no evidence is provided by the Complainant that Elvis Presley is a hero of the young whilst the evidence provided to the Complaints Board shows that this is clearly not the case.

Accordingly, a ruling is sought from the Board that this complaint be **not upheld**."

Deliberation

The Board initially dealt with the issue of whether the roundel was an advertisement. Having viewed the whole of the roundel, the Board was of the opinion that as the roundel promoted a product it could be considered an advertisement for the purposes of the Codes.

The Board then turned to the issue of whether the advertisement referred to heroes of the young.

The Board noted that the representation on the roundel could be interpreted as a likeness of Elvis Presley. However the Board was of the opinion that representation was open to alternative interpretations and did not necessarily refer to Elvis Presley. Likewise, the reference to 'The King' did not necessarily refer to Elvis and could be interpreted

variously as a play on the image of King Kong or, alternatively, a reference that the advertised product is 'The King' of the market.

Furthermore even if the representation was interpreted as a likeness of Elvis Presley the Board was sceptical as to whether, for the purposes of the Codes, Elvis Presley could be considered a hero of the young. The Board was of the view that the advertiser had provided evidence to substantiate the belief that Elvis Presley is not a hero of the young. The Board noted the evidence provided by the advertiser that sales of Elvis Presley music are supported by a mature age group. Furthermore, Elvis may be a "Hero of the young-at-heart", but market research indicated Elvis does not have a place in contemporary music format targeting current youth.

The Board also commented that the audience of the advertisement was an important consideration. The advertisement was not displayed in liquor outlets or elsewhere, and addressed liquor retailers rather than consumers. Therefore the young age group contemplated by Rule 1(d) was unlikely to come into contact with the advertisement.

As the advertisement complied with Rule 1(d) the Code for Liquor Advertising the Board ruled to not uphold the complaint.

Decision: Complaint Not Upheld



LION RED®

**This Red Hot Summer, NZ's leading beer brand,
presents...**

"THE KING"

**He's a cross between King Kong and the legendary Elvis, and this summer
The King will be the coolest thing in a Hawaiian shirt.**

**LION RED® has taken the theme of our exciting new 500ml can, the KING KAN, and
have literally brought the character to life. The King theme will apply across all key
LION RED® summer packs and will be heavily supported.**

LION RED® King Kan

**The first summer hit for The King and LION RED® is the new 500ml can with a wide mouth end. Designed to
hit key consumer price points, the King Kan will retail as follows:**

6 for \$9.95 12 for \$19.90 18 for \$29.85 24 for \$39.80

Innovative Point of Sale

**The point of sale range developed for The King this year is nothing short of sensational. Along with action shots
of The King riding summer waves, state of the art lasers have been installed at 150 of our top off premise outlets,
which trigger when ever a purchase of LION RED® is made to say, "Thank you... Thank you very much for
purchasing LION RED®."**

Eye Catching Merchandise

**From Hawaiian Shirts to Key Rings, Elvis sunglasses to I've seen the king T-Shirts, Whopper burgers
to silk scarves, LION RED® has it all covered with The King.**

The King on tour with The Exponents

**The King, as part of his own summer tour, will join the Exponents at key dates and venues to
promote LION RED®.**

Radio Campaign

**A North Island radio program will begin for The King from early December. Keep
an ear out for how you can win tickets to see NZ's leading rock band, LIVE, with
LION RED®, and other great King merchandise.**

**So... this summer remember,
"The King Ain't Dead...He's Red"**